
First Judicial District of Pennsylvania

51CR00048292007

John In

*Trial (Jury) Volume 1
September 10, 2008*



*First Judicial District of Pennsylvania
100 South Broad Street, Second Floor
Philadelphia, PA 19110
(215) 683-8000 FAX:(215) 683-8005*

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In The Court of Common Pleas
Of Philadelphia County
Criminal Trial Division
- - -
Commonwealth : CP-51-CR-0004829-2007
:
V :
:
JOHN IN :
- - -
DATE: Wednesday, September 10, 2008
Courtroom 801, Criminal Justice Center
Philadelphia, Pennsylvania
BEFORE: THE HONORABLE SANDY L.V. BYRD, and a
jury
WHAT: (Jury Trial-cont'd)
APPEARANCES:
LAUREN BARALDI, ESQUIRE
Assistant District Attorney
For the Commonwealth
RICHARD GIULIANI, ESQUIRE
For the Defendant
TRANSCRIBED BY:
LINDA PROCOPIO
Certified Court Reporter

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[1] Commonwealth v. John In
[2] THE COURT: We're back on the record
[3] in the case of Commonwealth versus John
[4] In, CP-51-CR-0004768, year 2007.
[5] Mr. In is here with his attorney, Mr.
[6] Giuliani. The Commonwealth by Miss
[7] Baraldi. Everyone is present. We have
[8] selected 11 jurors. We shall select one
[9] more and two alternates and get underway.
[10] Are you ready to proceed, counsel?
[11] MR. GIULIANI: I am, your Honor. Good
[12] morning. Thank you.
[13] MS. BARALDI: Yes. Your Honor.
[14] THE COURT: Okay. Obviously this is a
[15] public courtroom. If anybody who wishes
[16] may sit in as a spectator/observer. But
[17] please take the last row of seats.
[18] Would you bring in the panel please.
[19] Counsel, I asked the court officer and
[20] crier to place the 20 prospective jurors
[21] immediately behind you. If you want to
[22] sit on the other side of the table, you
[23] may. If you want to remain where you are
[24] and turn.
[25] Sheriff, is it okay if he sits on the

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[1] Commonwealth v. John In
[2] other side?
[3] THE SHERIFF: Yes.
[4] THE COURT:
[5] - - -
[6] (prospective jurors in the room at
[7] approximately 9:50 a.m)
[8] - - -
[9] THE COURT: Good morning, ladies and
[10] gentlemen. Would you swear the panel
[11] please.
[12] THE CRIER: Please stand.
[13] - - -
[14] (Whereupon prospective jury panel
[15] was sworn)
[16] - - -
[17] THE COURT: Ladies and gentlemen,
[18] welcome to courtroom 801. I'm Judge Byrd.
[19] You have been summoned here this morning
[20] to participate as jurors in the trial of a
[21] criminal case.
[22] This is the case of the Commonwealth
[23] of Pennsylvania versus John In. And I
[24] shall tell you more about the case in
[25] short order. I should first like to state

[1] Commonwealth v. John In
[2] something that you already know. And that
[3] is, is jury service is one of the most
[4] important responsibilities of citizenship.
[5] For that reason no one can be excused
[6] except for a most serious and most
[7] compelling of reasons. Those of you
[8] selected to serve on this case will be
[9] fact finders. A juror's responsibility is
[10] to present himself or herself here with an
[11] open mind, listen to the evidence, and
[12] then collectively decide from that
[13] evidence what the facts are. Thereafter,
[14] you have an obligation on your oath to
[15] accept the law from me as the presiding
[16] judge, then to apply that law to the facts
[17] as you determine the facts to be. And
[18] thereafter to reach a fair and impartial
[19] verdict consistent with the evidence and
[20] the law. So you are obviously the fact
[21] finder. Those selected to serve will be
[22] fact finders and as such you will be asked
[23] to pass up on the credibility of the
[24] witnesses and any other evidence that
[25] comes before you. By that, I mean the

[1] Commonwealth v. John In
[2] fact that someone has been arrested or
[3] charged with a crime is not evidence of
[4] guilt. The evidence unfolds in the
[5] courtroom for the edification of the jury.
[6] So the presumption of innocence remains
[7] with that defendant unless and until the
[8] Commonwealth proves guilt beyond a
[9] reasonable doubt.
[10] Because the Constitution affords every
[11] defendant a right of silence at trial,
[12] that defendant has no obligation to
[13] testify or call witnesses. And if he
[14] elects to exercise his right of silence,
[15] you may not hold it against him. You may
[16] draw no adverse inference, no inference of
[17] guilt from the decision to exercise that
[18] right.
[19] Your task would be as jurors to
[20] evaluate the evidence you have heard and
[21] to determine whether or not the
[22] Commonwealth proved the defendant's guilt
[23] beyond a reasonable doubt.
[24] I said before I will be asking
[25] questions. And it's important that I tell

[1] Commonwealth v. John In
[2] accuracy and or believability. I'm also
[3] very much aware all of you have been here
[4] at least as early as 8:30 this morning.
[5] And I know that you filled out a
[6] questionnaire because we have copies of
[7] them. So thank you. I have some
[8] questions to put to you. Please bear in
[9] mind that it's important that you answer
[10] my questions with honesty and candor and
[11] do so without making an effort to get out
[12] of jury service on making a special effort
[13] to get on to the jury. If you continue to
[14] answer questions in that fashion, we will
[15] complete jury selection today and start
[16] this case shortly thereafter.
[17] There are certain fundamental
[18] principles which guide our system of
[19] criminal law. These principles are in
[20] effect throughout these United States,
[21] here in the Commonwealth and in our sister
[22] jurisdiction, as well as in the federal
[23] court. These principles include the
[24] **following**: A defendant in a criminal case
[25] is presumed to be innocent. So the mere

[1] Commonwealth v. John In
[2] you that my questions are not designed to
[3] embarrass or to invade your privacy. This
[4] is a necessary part of jury selection. If
[5] I ask a question of you that applies to
[6] you, if you are not certain whether it
[7] applies to you, in those two instances
[8] raise your hand. You have each been given
[9] a card. It has a number on it. When you
[10] raise your card, you have that card in
[11] hand and the card faces me. Keep that
[12] card raised until such time as the court
[13] officer calls out your number. Then you
[14] may lower the card again.
[15] Two questions on the questionnaire
[16] should be addressed at this junction. And
[17] **one question asked**: Would you be more
[18] likely to believe the testimony of a
[19] police officer or other law enforcement
[20] agent simply because of his or her job?
[21] **The other asked**: Would you be less likely
[22] to believe the testimony of a police
[23] officer or other law enforcement agent
[24] simply because of his or her job?
[25] When I tell you, ladies and gentlemen,

[1] Commonwealth v. John In
[2] that you are the fact finders, it should
[3] be obvious to all of you that you must
[4] judge the credibility of every witness
[5] using the very same standards. The law is
[6] very clear. You may give no greater
[7] weight or lesser weight to the testimony
[8] of a police officer or other law
[9] enforcement agent because of his or her
[10] job. The court will give you standards by
[11] which you are to judge the credibility of
[12] all witnesses and those standards are to
[13] be applied to every witness, the standards
[14] to be applied to all witnesses. So you
[15] will evaluate the testimony of a police
[16] officer using the same standard as you
[17] would evaluate that of a truck driver or
[18] astronaut, a school teacher or architect.
[19] No one comes before you with entitlement
[20] to be believed or disbelieved, for that
[21] matter.
[22] As fact finders, you cannot remove the
[23] burden of determining the facts in this
[24] case by saying that was a police officer
[25] testifying, I would never believe a police

[1] Commonwealth v. John In
[2] These charges against the defendant
[3] are the result of the following
[4] **allegation**: The Commonwealth alleges that
[5] on or about March 7, 2007, at or about
[6] 5:15 a.m., this defendant, John In, and
[7] two other men, Jerry Jean and Dyshon
[8] Marable, entered the residence of Vuthary
[9] Yun located here in Philadelphia at 720
[10] Mifflin Street, and they do so without
[11] permission. And while inside those
[12] **premises robbed three persons**: Vuthary
[13] Yun, Dina Khem, and Christina Khem.
[14] So, the first question I have is, do
[15] any of you know or think you know
[16] something or anything at all about the
[17] allegations that gave rise to the charges
[18] against this defendant? If so, please
[19] raise your hand.
[20] **THE CRIER**: No response, your Honor.
[21] **THE COURT**: Now, ladies and gentlemen,
[22] it's important that when I ask the
[23] question of you, if it applies to you that
[24] you don't blurt out something or anything.
[25] Just raise your hand. And since I'll be

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[2] officer; or that was a police officer
[3] testifying, I would always believe a
[4] police officer. Whether or not you
[5] believe a particular witness at the
[6] conclusion of his or her testimony as you
[7] deliberate is up to you after you have
[8] applied the standards. You cannot say
[9] from the outset that's a cop, I don't
[10] believe him. That's a cop, I'll always
[11] believe in. That's because you are the
[12] fact finders.
[13] When you take an oath to be a juror,
[14] you take an oath to follow the court's
[15] instructions.
[16] This is, as I said, the case of the
[17] Commonwealth of Pennsylvania versus John
[18] In. And in this case the defendant has
[19] been charged with the following offenses:
[20] He has been charged with robbery, three
[21] counts; burglary; possession of an
[22] instrument of crime; and violation of the
[23] Uniform Firearms Act, section 6106 and
[24] section 6108. And he has been charged
[25] with criminal conspiracy.

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[2] talking to you each of you individually,
[3] you can bring that to my attention at that
[4] time. It's also important that you if you
[5] think you know something or anything about
[6] that case you don't share that with your
[7] fellow jurors. If it's necessary to
[8] excuse you, hopefully we can proceed with
[9] the rest of the panel members without
[10] having to start all over again. Bear that
[11] in mind.
[12] And I will continue to now introduce
[13] you to the principals in the case. You
[14] heard me say this is the case of the
[15] Commonwealth versus John In. Both sides
[16] have counsel. The Commonwealth is
[17] represented and the defendant is
[18] represented. The Commonwealth in this
[19] case is represented by a member of the
[20] district attorney's office.
[21] Now, you can see that they, that is,
[22] the principals have positioned themselves
[23] so you can see them. Typically I ask them
[24] to stand, their backs are to the panel.
[25] In this instance since they are facing

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[1] Commonwealth v. John In
[2] you, I'll ask them to remain seated as I
[3] introduce them from my right over to the
[4] end.
[5] The first person is, as I said the
[6] assistant district attorney. Her name is
[7] Lauren Baraldi.
[8] **MS. BARALDI:** Good morning.
[9] **THE COURT:** The second person is a
[10] member of the defense bar. He represents
[11] the defendant. His name is Richard
[12] Giuliani.
[13] **MR. GIULIANI:** Good morning,
[14] everybody.
[15] **THE COURT:** And the third person
[16] seated to Mr. Giuliani's left is the
[17] defendant, John In.
[18] **THE DEFENDANT:** Good morning.
[19] **THE COURT:** The next question is: Do
[20] any of you, have you had any association
[21] with or are you related by blood or
[22] marriage to either the defendant, his
[23] attorney, the Commonwealth's attorney or
[24] me? I'm Judge Byrd. If so, please raise
[25] your hand.

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[2] and gentlemen, all know that in a trial of
[3] a criminal case, witnesses will be called
[4] and I will be reading to you from a list
[5] of potential witnesses. I use that phrase
[6] potential witness. Although some of the
[7] persons on this list will undoubtedly be
[8] called as witnesses to testify, others
[9] will be perhaps mentioned by those
[10] testifying. So others will merely be
[11] mentioned during the course of this trial.
[12] It's a long list. Listen carefully. When
[13] I finish reading the list, I'll ask if you
[14] know any of these persons. The first
[15] person I shall introduce were the
[16] aforementioned complainants in the case.
[17] All from South Philadelphia. They include
[18] Vuthary Yun, Y-u-n; Christina Khem,
[19] K-h-e-m; Dina Khem, K-h-e-m; Angela Khem;
[20] and Keith Khem, same spelling. Dyshan
[21] Marable, M-a-r-a-b-l-e; first name,
[22] D-y-s-h-a-n,in, from the 1700 block of
[23] north Lindenwood Street. Jacqueline Jean,
[24] J-e-a-n and Jerry Jean from the 300 block
[25] of Clarkson Avenue.

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[2] **THE CRIER:** No response, your Honor.
[3] **THE COURT:** You, jurors, may look
[4] about the courtroom. You see that we have
[5] a full staff. We have a court reporter
[6] who is taking down a written transcription
[7] of these proceedings. We have a court
[8] crier who is keeping a record of these
[9] procedures. We have a court officer and
[10] court crier who I think you have already
[11] met. And a deputy sheriff. The question
[12] **is:** Do you know or have you any
[13] association with or are you related by
[14] blood or marriage to any of the persons
[15] making up the court staff? If so, please
[16] raise your hand.
[17] **THE CRIER:** No response.
[18] **THE COURT:** Jurors, give me one quick
[19] second. I will see the attorneys at
[20] side-bar for a moment.
[21] - - -
[22] (off-the-record discussion at
[23] side-bar)
[24] - - -
[25] **THE COURT:** Thank you. You, ladies

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[1] Commonwealth v. John In
[2] Same question. Do any of you have,
[3] know or have you had any association with
[4] or are you related by blood or marriage to
[5] any of the persons just named? If so,
[6] please raise your hand.
[7] **THE CRIER:** No response, your Honor.
[8] **THE COURT:** The following persons from
[9] the Philadelphia Police Department.
[10] First from the Third Police District:
[11] Police Officer Peter Seabron. Also from
[12] the Third Police District, Police Officer
[13] Roger Birch. From the Fourth Police
[14] District, Police Officer Thomas Nolan,
[15] Police Officer Kevin Cannon, Police
[16] Officer Raphael McGough, Police Officer
[17] Carol Jenkins, Police Officer Kevon
[18] Baldwin, Police Officer Felicia Battles,
[19] and Police Officer Robert Robinson from
[20] the Fourth Police District. Also from
[21] the Fourth Police District, Sergeant
[22] Steven Woods.
[23] From the 17th District, Lieutenant
[24] Michael Deal, and Sergeant Stephen
[25] Liczbinski, then of the 25th Police

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[2] District.
[3] In addition, from the Firearms
[4] Identification Unit, Officer Leonard
[5] Johnson; two crime scene officers:
[6] Officer Avon Wilson and Officer Wilfredo
[7] Aponte, both from the crime scene unit.
[8] Two detectives. One from Northeast
[9] Detectives Division, Detective Robert
[10] Conn, and from South Detectives Division,
[11] Detective John Hopkins.
[12] From Internal Affairs, Lieutenant
[13] Steve Nolan and Lieutenant John
[14] Prendergast.
[15] Finally, a civilian employee from the
[16] DNA laboratory, Benjamin Levin.
[17] Same question, ladies and gentlemen.
[18] Do any of you know or have you had any
[19] association with or are you related by
[20] blood or marriage to any of the persons
[21] just mentioned? If so, please raise your
[22] hand.
[23] **THE CRIER:** Number 20. No further
[24] response, your Honor.
[25] **THE COURT:** Thank you.

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[2] attorneys sum up the case by way of
[3] closing argument, then I'll give you
[4] instruction on the law and the case will
[5] be yours for deliberation either on
[6] Friday, more likely on this coming Monday.
[7] That's our best guess as to how long the
[8] case will last. We sometimes
[9] underestimate the length of time the case
[10] will last. Sometimes over estimate the
[11] length of time the case will last. We
[12] think we got it just about right. I can
[13] tell you this, however, this is not a
[14] death penalty case, nor will the jury be
[15] sequestered. No one will be asked to
[16] bring some overnight bag and be put up in
[17] a Center City hotel. We work business
[18] hours here, perhaps which you keep in your
[19] everyday places of employment. I expect
[20] to start each morning 9:30, work through
[21] the morning, take a break, as you members
[22] of the jury require them. We have an hour
[23] for lunch and it's my intention to work
[24] until 4:30 in the afternoon. It is my
[25] practice if it appears we are falling

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[2] **THE COURT:** Members of the panel, I
[3] already discussed with you those
[4] Constitutional principles which guide our
[5] system of criminal law. Let me ask the
[6] **following questions:** Does anyone here
[7] have a fixed opinion about the guilt or
[8] innocence of this defendant to any of the
[9] charges made against him? If so, please
[10] raise your hand.
[11] **THE CRIER:** No response, your Honor.
[12] **THE COURT:** Do any of you know of any
[13] reason why if you were selected to serve
[14] on this jury you would not be able to give
[15] both sides, the defendant and the
[16] Commonwealth, a fair and impartial trial?
[17] If so, please raise your hand.
[18] **THE CRIER:** No response, your Honor.
[19] **THE COURT:** Ladies and gentlemen, we
[20] expect this case to last approximately 3
[21] days. We expect to start testimony
[22] immediately after we conclude jury
[23] selection and take testimony today and
[24] tomorrow and perhaps into Friday. It may
[25] very well be that you will hear the

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[2] behind to start a half hour earlier at 9
[3] and work a half hour later until 5:30. As
[4] you can see, these are not onerous hours.
[5] They are much like the hours most of you
[6] keep in your places of employment.
[7] Bearing everything in mind that I
[8] said, is there anyone here for whom jury
[9] service in this case would be a real,
[10] true, serious hardship, not an
[11] inconvenience, ladies and gentlemen, but a
[12] hardship? If you have a hardship raise
[13] your hand.
[14] **THE CRIER:** Number 4, number 5, number
[15] 14, number 17. No further response, your
[16] Honor.
[17] **THE COURT:** Thank you, ladies and
[18] gentlemen. We're going to ask that you be
[19] so kind as to follow the instructions of
[20] the court officer and we will be with you
[21] momentarily.
[22] Miss Baraldi and Mr. Giuliani, any
[23] additional questions you want me to ask
[24] the panel as a whole?
[25] **MR. GIULIANI:** No, your Honor.

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[2] **MS. BARALDI:** No, your Honor.
[3] - - -
[4] (prospective panel leaves the room)
[5] - - -
[6] **THE COURT:** Bring out the first
[7] person.
[8] - - -
[9] (Whereupon prospective juror no. 1
[10] enters the room at this time.)
[11] - - -
[12] **THE CRIER:** State your name.
[13] **PROSPECTIVE JUROR NO. 1:** Leslie
[14] Wingard.
[15] **BY THE COURT:**
[16] **Q.** Miss Wingard, tell us what you do for a living
[17] please.
[18] **A.** Executive assistant.
[19] **Q.** Would you say that one more time?
[20] **A.** Executive assistant for T.L. Martin and
[21] Associates and evening receptionist at Presbyterian
[22] Children's Village.
[23] **Q.** What kind of firm is T.L. Martin?
[24] **A.** Retail design and construction firm.
[25] **Q.** How long have you been with them?

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[2] **A.** Ten years ago.
[3] **Q.** Did she know her assailant?
[4] **A.** Yes.
[5] **Q.** Was it reported?
[6] **A.** Yes.
[7] **Q.** Is there anything about that case which would
[8] affect your ability to be a fair juror in this case?
[9] **A.** No.
[10] **Q.** You also checked off you or someone close to
[11] you was arrested and charged with a crime.
[12] **A.** Yes. My sister.
[13] **Q.** What was she charged with?
[14] **A.** Auto theft.
[15] **Q.** What is your sister's name?
[16] **A.** Stephanie Capehart.
[17] **Q.** Did you attend her trial?
[18] **A.** No.
[19] **Q.** How long ago was that?
[20] **A.** Five years ago.
[21] **Q.** Here in Philadelphia?
[22] **A.** Yes.
[23] **Q.** Do you have an opinion as to whether or not
[24] she was treated fairly or unfairly?
[25] **A.** No, she was wrong.

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[2] **A.** Since June.
[3] **Q.** What kind of work did you do before that?
[4] **A.** In school for the last two years and I was a
[5] director of human resource information system at
[6] Drexel.
[7] **Q.** You said you have an evening job, as well.
[8] What is that?
[9] **A.** Evening receptionist at Presbyterian
[10] Children's Village, a behavioral facility in
[11] Rosemont.
[12] **Q.** What does the job consist of?
[13] **A.** Evening receptionist, answering phones.
[14] **Q.** How long have you done that?
[15] **A.** Two years, almost three.
[16] **Q.** Have you or someone close to you been the
[17] victim of a crime?
[18] **A.** Yes.
[19] **Q.** What relationship is that person or those
[20] persons to you?
[21] **A.** My cousin.
[22] **Q.** What happen to your cousin?
[23] **A.** She was assaulted and raped.
[24] **Q.** I'm sorry to hear that. How long ago was
[25] that?

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[2] **Q.** Is there anything about that case which would
[3] affect your ability to be a fair juror in this case?
[4] **A.** No.
[5] **Q.** Do you know people in law enforcement?
[6] **A.** Yes.
[7] **Q.** What relationship are they to you?
[8] **A.** My cousin is a cop and my uncle is a lawyer.
[9] **Q.** The cousin who is a police officer, is that
[10] here in Philadelphia?
[11] **A.** Yes.
[12] **Q.** You say your uncle is an attorney?
[13] **A.** Yes.
[14] **Q.** What kind of law does he practice?
[15] **A.** I think pretty much everything.
[16] **Q.** To the best of your knowledge, does he
[17] practice criminal law?
[18] **A.** Yes.
[19] **Q.** What his name?
[20] **A.** John Connor.
[21] **Q.** How often do you talk to him about his work?
[22] **A.** I'd rather not hear about it.
[23] **Q.** How often do you see each other?
[24] **A.** Maybe a couple times a month.
[25] **Q.** If you were selected, is there anything, the

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[2] fact that you know Mr. Connor which would affect
[3] your ability to be a fair juror in this case?
[4] **A.** No.
[5] **Q.** Is there anything about the fact that your
[6] cousin is a police officer which would affect your
[7] ability to be a fair juror in this case?
[8] **A.** No.
[9] **Q.** Would you give us your word if you are
[10] selected you will not speak specifically with either
[11] of those two individuals or anyone else for that
[12] matter about this case?
[13] **A.** Yes.
[14] **Q.** Let me just ask you three other questions.
[15] First, would you have any problem following my
[16] instructions that the defendant in this case is
[17] presumed to be innocent until proven guilty beyond a
[18] reasonable doubt?
[19] **A.** I don't think so.
[20] **Q.** When you say, "you don't think so," is that a
[21] figure of speech or do you have some doubt about
[22] that?
[23] **A.** I'm not sure.
[24] **Q.** What is it you are not sure about?
[25] **A.** I guess with the whole case.

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[1] Commonwealth v. John In
[2] (Whereupon prospective juror no. 2
[3] enters the room at this time.)
[4] - - -
[5] **THE CRIER:** State your name.
[6] **PROSPECTIVE JUROR NO. 2:** Danielle
[7] Anderson.
[8] **BY THE COURT:**
[9] **Q.** Miss Anderson, tell us what you do for a
[10] living please.
[11] **A.** I'm a benefit specialist in human resources
[12] for Morgan, Lewis and Bokius.
[13] **Q.** How long have you been in your present job?
[14] **A.** Five years this coming January.
[15] **Q.** You have two children, ma'am?
[16] **A.** Yes.
[17] **Q.** Can you give me ages and sex of your children?
[18] **A.** 3 and 6. Both girls.
[19] **Q.** Have you or anyone close to you ever worked as
[20] a police officer or other law enforcement agent
[21] including prosecutor, public defender, private
[22] criminal defense lawyer, detective, security guard,
[23] prison guard?
[24] **A.** My cousin is a sheriff.
[25] **Q.** Is that here in Philadelphia?

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[1] Commonwealth v. John In
[2] **Q.** Next question. Would you have any problem
[3] following my instruction that the defendant in a
[4] criminal case does not have to take the witness
[5] stand or present evidence and it cannot be held
[6] against him if he elects to remain silent at trial?
[7] **A.** Sometimes I feel it's important to hear their
[8] side.
[9] **Q.** Would you have any problem during the
[10] course -- strike that. Would you have any problem
[11] following my instruction that in a criminal case
[12] just because someone is arrested doesn't mean he's
[13] guilty of anything?
[14] **A.** I'm not sure how to answer that one 'cause I
[15] kind of was on yes and no on that one.
[16] **THE COURT:** Would you give us a
[17] moment, ma'am. Wait on the other side of
[18] the exit door to your right.
[19] - - -
[20] (Whereupon prospective juror no. 1
[21] exits the room at this time.)
[22] - - -
[23] **MR. GIULIANI:** Motion for cause, your
[24] Honor.
[25] **THE COURT:** Cause granted

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[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** What is your cousin name?
[4] **A.** Steven Postell.
[5] **Q.** How do you spell that ?
[6] **A.** P-o-s-t-e-l-l.
[7] **Q.** Would the fact your cousin works in law
[8] enforcement, would that in any way affect your
[9] ability to be a fair juror?
[10] **A.** No.
[11] **Q.** You also told me you work for a law firm?
[12] **A.** Yes.
[13] **Q.** To the best of your knowledge, do any of the
[14] lawyers practice criminal law?
[15] **A.** No.
[16] **Q.** Would the fact you work for a law firm in any
[17] way affect your ability to be a fair juror?
[18] **A.** No.
[19] **Q.** If you were selected to serve on this jury,
[20] can you give us your word that specifically you will
[21] not speak with either your cousin or any of the
[22] attorneys in the firm or generally give us your word
[23] you will not speak to anybody about this case?
[24] **A.** Yes.
[25] **Q.** You live in the north Philadelphia section of

[1] Commonwealth v. John In
[2] the city?
[3] **A.** Yes.
[4] **Q.** Have you lived in that section of the city for
[5] more than ten years?
[6] **A.** Yes.
[7] **Q.** If you were selected to serve on this jury,
[8] would you give both sides, the defendant and the
[9] Commonwealth, a fair trial?
[10] **A.** Yes.
[11] **THE COURT:** Thank you, ma'am. Wait on
[12] the other side of the exit door to your
[13] right. We will be right with you.
[14] - - -
[15] (Whereupon prospective juror no. 2
[16] exits the room at this time.)
[17] - - -
[18] (pause)
[19] - - -
[20] **THE CRIER:** Panel member number 2 will
[21] be number 12.
[22] **THE COURT:** We need 2 alternates. Do
[23] we need any more than two?
[24] **MS. BARALDI:** No.
[25] **MR. GIULIANI:** No.

[1] Commonwealth v. John In
[2] **A.** New York. Pennsylvania I was called for one
[3] day.
[4] **Q.** How long ago did you serve in New York?
[5] **A.** Five years. Maybe 7 or 8.
[6] **Q.** Do you remember whether it was a criminal case
[7] or civil case?
[8] **A.** That was a little case, getting a little case
[9] and sending it to jury, grand jury.
[10] **Q.** You were on a grand jury?
[11] **A.** Yeah.
[12] **Q.** You have one child?
[13] **A.** One child.
[14] **Q.** What is the age and sex of your child?
[15] **A.** Male. 14 years old.
[16] **Q.** If you were selected to serve on this jury,
[17] would you give both sides, the defendant and the
[18] Commonwealth, a fair trial?
[19] **A.** I will.
[20] **THE COURT:** Thank you, ma'am. If you
[21] would wait on the other side of that door
[22] and we will be right with you .
[23] - - -
[24] (Whereupon prospective juror no. 3
[25] exits the room at this time.)

[1] Commonwealth v. John In
[2] **THE COURT:** Let's proceed and get 2
[3] alternate jurors.
[4] - - -
[5] (Whereupon prospective juror no. 3
[6] exits the room at this time.)
[7] - - -
[8] **THE CRIER:** State your name.
[9] **PROSPECTIVE JUROR NO. 3:** Marie
[10] Theodore
[11] **BY THE COURT:**
[12] **Q.** Miss Theodore, tell us what you do for a
[13] living please.
[14] **A.** I am an LPN and work in a nursing home.
[15] **Q.** How long have you been an LPN?
[16] **A.** LPN from the year I passed the board test. It
[17] was 1998. And since then I was in New York and now
[18] I'm going to be five years in Pennsylvania.
[19] January.
[20] **Q.** You have an accent. May I ask where back home
[21] is?
[22] **A.** Haiti.
[23] **Q.** So French would be your first language?
[24] **A.** Creole.
[25] **Q.** Understood. Have you served on a jury before?

[1] Commonwealth v. John In
[2] - - -
[3] **THE COURT:** Can I see the lawyers one
[4] quick second.
[5] - - -
[6] (side-bar not on the record)
[7] - - -
[8]
[9] **THE COURT:** Would you ask her to come
[10] back in please.
[11] - - -
[12] (Whereupon prospective juror no. 3
[13] reenters the room at this time.)
[14] - - -
[15] **BY THE COURT:**
[16] **Q.** Can you hear me okay?
[17] **A.** Yes.
[18] **Q.** I'm going to ask you a follow-up question.
[19] You told us that your first language is Creole and
[20] English is your second language, correct?
[21] **A.** My first language, my mother's language is
[22] Creole and back in Haiti we speak French and I later
[23] learned English which is my third language.
[24] **Q.** Here's my question. Do you have any concern
[25] about your ability to follow this case which will be

[1] Commonwealth v. John In
[2] conducted exclusively in English?
[3] **A.** I, I'm not perfect in English. I could
[4] understand it.
[5] **Q.** Do you think that you would be able to
[6] understand the language sufficiently to serve on
[7] this jury?
[8] **A.** If I can understand everything. Would you
[9] repeat that? You said if I can understand English?
[10] **Q.** Do you think you understand English well
[11] enough to serve on this jury and follow the
[12] testimony as it's presented to you and your fellow
[13] jurors in English?
[14] **A.** Yes.
[15] **THE CRIER:** Thank you. If you would
[16] wait on the outside. We will be right
[17] with you.
[18] - - -
[19] (Whereupon prospective juror no. 3
[20] exits the room at this time.)
[21] - - -
[22] **THE COURT:** Counsel, may I see the 2
[23] of you.
[24] - - -
[25] (side-bar not on the record)

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** Do you have any physical or psychological
[4] disability that might interfere with or prevent you
[5] from serving as a juror in this case?
[6] **A.** No, sir.
[7] **Q.** Have you or anyone close to you ever been the
[8] victim of a crime?
[9] **A.** Yes.
[10] **Q.** What relationship is that person or those
[11] persons to you?
[12] **A.** Friends and cousins.
[13] **Q.** How many friends?
[14] **A.** Like off-hand probably at least 4.
[15] **Q.** What happened to your 4 friends?
[16] **A.** Some robbed, some beaten, random crime.
[17] **Q.** How many were robbed?
[18] **A.** Two were robbed.
[19] **Q.** The friend, first one who was robbed, was that
[20] strong-arm or gunpoint?
[21] **A.** I think it was knife.
[22] **Q.** Was it reported?
[23] **A.** No.
[24] **Q.** Anyone arrested?
[25] **A.** No.

[1] Commonwealth v. John In
[2] - - -
[3] (back to the record)
[4] - - -
[5] **MS. BARALDI:** The Commonwealth has a
[6] motion for cause as to that panel member.
[7] **MR. GIULIANI:** Defense would make the
[8] same motion.
[9] **THE COURT:** All right. Excused by
[10] agreement.
[11] - - -
[12] (Whereupon, prospective juror no. 4 enters
[13] the room at this time)
[14] - - -
[15] **THE CRIER:** State your name.
[16] **PROSPECTIVE JUROR NO. 4:** Julius King.
[17] **BY THE COURT:**
[18] **Q.** Mr. King, tell us what you do for a living
[19] please.
[20] **A.** Sports performance training, personal
[21] training.
[22] **Q.** How long have you been in that line of work?
[23] **A.** Personal training for about 6 years. Sports
[24] performance training for 3.
[25] **Q.** You are self-employed?

[1] Commonwealth v. John In
[2] **Q.** Friend number 2, what kind of robbery was
[3] that?
[4] **A.** Car robbery.
[5] **Q.** So carjacked?
[6] **A.** Yes.
[7] **Q.** Was it reported?
[8] **A.** The car, yes.
[9] **Q.** Was the crime reported to the authorities?
[10] **A.** Yes.
[11] **Q.** To the best of your knowledge, was anyone
[12] arrested?
[13] **A.** No.
[14] **Q.** You had 2 friends assaulted?
[15] **A.** Yes.
[16] **Q.** The first friend, what was the nature of the
[17] assault?
[18] **A.** Beaten. It was coming home from school.
[19] **Q.** Were they assaulted with fists, baseball bat,
[20] knives?
[21] **A.** Just fists.
[22] **Q.** These were students?
[23] **A.** Yes. This is in high school, sir.
[24] **Q.** Were these crimes reported?
[25] **A.** No.

[1] Commonwealth v. John In
[2] **Q.** Is there anything, any of those occurrences
[3] which would affect your ability to be a fair juror
[4] in this case?
[5] **A.** No.
[6] **Q.** You said a cousin or cousins were the victim
[7] of crime?
[8] **A.** Yes.
[9] **Q.** How many cousins?
[10] **A.** Just 2.
[11] **Q.** What happened to your cousins?
[12] **A.** They, they were, the first 2 you asked about.
[13] **Q.** So you put the friends and cousins in the
[14] friend category? You discussed those?
[15] **A.** Yes.
[16] **Q.** Anybody else?
[17] **A.** No, sir.
[18] **Q.** Let me move to the next question. Have you or
[19] anyone close to you ever been arrested or charged
[20] with a crime?
[21] **A.** Yes. What do you consider close?
[22] **Q.** Someone you consider close. Close friend or
[23] family member.
[24] **A.** Family members, yes.
[25] **Q.** How many?

[1] Commonwealth v. John In
[2] **Q.** Do you have an opinion as to whether he was
[3] fairly treated or unfairly?
[4] **A.** No.
[5] **Q.** Did you say also friends who were --
[6] **A.** No, sir.
[7] **Q.** Is there anything about either of these
[8] occurrences you just discussed with me, the arrest
[9] and charge against your uncle and/or the arrest and
[10] charge against your cousin which would affect your
[11] ability to be a fair juror in this case?
[12] **A.** No, sir.
[13] **Q.** When you checked off you are or someone close
[14] to you was an eyewitness to crime, was that
[15] something we already discussed or something else?
[16] **A.** Yes.
[17] **Q.** Something else?
[18] **A.** No. Something we already discussed.
[19] **Q.** Let me ask you: Have you or anyone close to
[20] you ever worked in law enforcement?
[21] **A.** No.
[22] **Q.** You checked yes on the form. Law enforcement
[23] category includes correctional officer, prison
[24] guard, lawyers?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] **A.** I would say offhand two.
[3] **Q.** Tell me about them. What family member,
[4] number one, what relationship is he or she to you
[5] and what were they charged with?
[6] **A.** Uncle. I do not exactly know.
[7] **Q.** How long ago was he charged?
[8] **A.** At least 5 years ago.
[9] **Q.** In Philadelphia?
[10] **A.** Yes.
[11] **Q.** Did you go to the trial?
[12] **A.** No.
[13] **Q.** You don't know what he was charged with?
[14] **A.** Honestly no.
[15] **Q.** Do you have an opinion whether he was treated
[16] fairly for unfairly?
[17] **A.** No.
[18] **Q.** The second person, relationship and charge?
[19] **A.** Same. A cousin.
[20] **Q.** What was he charged with?
[21] **A.** I have no idea.
[22] **Q.** How long ago was it?
[23] **A.** 5 or 6.
[24] **Q.** Did you attend that trial?
[25] **A.** No.

[1] Commonwealth v. John In
[2] **Q.** What relationship is that person to you?
[3] **A.** Friend.
[4] **Q.** What does he or she do for a living?
[5] **A.** A lawyer.
[6] **Q.** What kind of law does he practice?
[7] **A.** Honestly I can't tell you. He's in New
[8] Jersey.
[9] **Q.** Do you know if your friend practices criminal
[10] law?
[11] **A.** I'm going to say I honest don't know.
[12] **Q.** Can you give us your word if you are selected
[13] to serve on this jury you will not speak with that
[14] friend about this case?
[15] **A.** Yes, sir.
[16] **Q.** Is there anything about the fact that you know
[17] someone in law enforcement which would affect our
[18] ability to be a fair juror in this case?
[19] **A.** I would say no. I might have a little more
[20] education about stuff, but.
[21] **Q.** Say that one more time.
[22] **A.** Maybe I might know a little more about law
[23] than a normal person, besides that, no.
[24] **Q.** By virtue of your friendship with this lawyer
[25] or some other ways, friendship, by talking

[1] Commonwealth v. John In
[2] generally, would you have any problem following my
[3] instruction that the defendant in a criminal case
[4] can does not have to take the witness stand or
[5] present evidence and if he elects not to testify and
[6] remain silent that cannot be held against him?
[7] **A.** No.
[8] **Q.** You checked yes on the form. Is that a
[9] mistake?
[10] **A.** I changed it.
[11] **Q.** You did indeed. Thank you. Next question.
[12] Would you have any problem following the court's
[13] instruction in a criminal case that just because
[14] someone is arrested it does not mean he's guilty of
[15] anything?
[16] **A.** If I understand that I would say, yes.
[17] **Q.** You would follow that instruction or you would
[18] not? Here's the question. The law is that a
[19] defendant is presumed to be innocent and merely
[20] because someone is arrested is not evidence of
[21] guilt. The evidence will be presented in the
[22] courtroom for you and your fellow jurors to decide
[23] whether or not he's guilty. Would you be able to
[24] accept and follow that instruction?
[25] **A.** Yes. I think I misread it wrong. Yes.

[1] Commonwealth v. John In
[2] that door. We will be right with you.
[3] - - -
[4] (Whereupon prospective juror no. 4
[5] exits the room at this time.)
[6] - - -
[7] **THE COURT:** Counsel.
[8] Let me see counsel at side-bar.
[9] - - -
[10] (side-bar not on the record)
[11] - - -
[12] (back on the record)
[13] - - -
[14] **MR. GIULIANI:** Defense makes a motion
[15] for cause finding this particular person's
[16] employment would amount to hardship in
[17] this particular case based upon the facts
[18] and circumstances of his employment.
[19] **THE COURT:** Commonwealth.
[20] **MS. BARALDI:** Your Honor, the
[21] Commonwealth's position that this does not
[22] qualify as a hardship as it goes to his
[23] employment. He works three times a week
[24] as if a full-time job. I understand he's
[25] a contractor, but I, I don't feel the

[1] Commonwealth v. John In
[2] **Q.** You heard me say earlier to the panel as a
[3] whole you may give no greater or lesser wait to the
[4] testimony of a police officer or other law
[5] enforcement agent simply because of his or her job.
[6] Would you be able to accept and follow that
[7] instruction?
[8] **A.** Yes.
[9] **Q.** Did you raise your hand for a hardship?
[10] **A.** Yes.
[11] **Q.** What is the nature of your hardship?
[12] **A.** The nature of my job, sir, I do sports
[13] performance packages, training, personal training, a
[14] lot of stuff is contracted out. I have a school of
[15] 150 athletes I'm supposed to be training.
[16] **Q.** Where is this?
[17] **A.** Academy New Church.
[18] **Q.** How long is that contract for?
[19] **A.** This contract will be up in 2 weeks.
[20] **Q.** How often do you go to this place to train?
[21] **A.** 3 times a week.
[22] **Q.** It lasts for how long?
[23] **A.** 2 more weeks. It's been going on for 4 weeks.
[24] **THE COURT:** Would you give us a
[25] moment, sir. Wait on the other side of

[1] Commonwealth v. John In
[2] employment qualifies as a hardship.
[3] **THE COURT:** Would you bring him back
[4] to the bar for one second.
[5] - - -
[6] (Whereupon prospective juror no. 4
[7] re-enters the room at this time.)
[8] - - -
[9] **BY THE COURT:**
[10] **Q.** Can you hear me?
[11] **A.** Yes.
[12] **Q.** I want to address the hardship issue. You
[13] said that you have a contract with the Academy New
[14] Church?
[15] **A.** Yes.
[16] **Q.** Is that a school?
[17] **A.** It's a private school.
[18] **Q.** What does the contract entail?
[19] **A.** Speed, agility, explosive training, sports
[20] performance training.
[21] **Q.** The folks you teach, high school students?
[22] **A.** Yes. Various sports.
[23] **Q.** How many?
[24] **A.** 120 total.
[25] **Q.** You have a contract for last week, this week

[1] Commonwealth v. John In
[2] and next week?
[3] **A.** Well, 4 weeks prior to this and the next 2.
[4] **Q.** You are into the contract as we speak?
[5] **A.** Yes.
[6] **Q.** What hours would you have been there today?
[7] **A.** I would get there at 3:30.
[8] **Q.** How long do you train them?
[9] **A.** 'til 5 o'clock. Other than that, I have other
[10] clients that paid for services. I miss -- the main
[11] thing, if I miss it I don't get paid, sir. I have
[12] student loans, rent, things like that. I need to
[13] get paid. It's not like I'm reimbursed by showing
[14] them this. My clients will not say, here's the
[15] money for today's session.
[16] **THE COURT:** Thank you. If you would
[17] wait again. We will be right with you.
[18] - - -
[19] (Whereupon prospective juror no. 4
[20] exits the room at this time.)
[21] - - -
[22] **THE COURT:** I'll grand his hardship.
[23] - - -
[24] - - -
[25] (Whereupon, prospective juror no. 5 enters

[1] Commonwealth v. John In
[2] **Q.** I understand that. Would you accept and
[3] following my instruction?
[4] **A.** Definitely, yes.
[5] **Q.** You raise your hand jury service would be a
[6] hardship?
[7] **A.** In the way that you phrased it, it wouldn't be
[8] a hardship. It would be a hardship on my students
[9] my being away for that length of time, even 3 days
[10] is, especially 3 days in a row. That hurts the
[11] students. I basically teach algebra and all 3 are
[12] inclusion classes.
[13] **Q.** You teach where?
[14] **A.** In the public schools. Bensalem High School.
[15] **Q.** It would not be the ideal situation, but they
[16] could get a substitute?
[17] **A.** A substitute. Not a problem. There is a
[18] substitute there today.
[19] **Q.** If you were selected to serve on this jury,
[20] would you give both sides, the defendant and the
[21] Commonwealth, a fair trial?
[22] **A.** Yes.
[23] **THE COURT:** Thank you, sir. If you
[24] would wait on the other side of that exit
[25] door. We will be right with you.

[1] Commonwealth v. John In
[2] the room)
[3] - - -
[4] **THE CRIER:** State your name.
[5] **PROSPECTIVE JUROR NO. 5:** Wolodymir
[6] Katolik.
[7] **BY THE COURT:**
[8] **Q.** Mr. Katolik, what do you do for a living?
[9] **A.** I'm a mathematics teacher at Bensalem High
[10] School.
[11] **Q.** You have been a teacher how long?
[12] **A.** About ten years off and on. Currently almost
[13] 4 years straight at Bensalem.
[14] **Q.** Early this morning I instructed you and your
[15] fellow jurors that as the fact-finder in a criminal
[16] case you may give no greater or lesser weight to the
[17] testimony of a police officer or other law
[18] enforcement agent simply because of his or her job.
[19] A police officer is to have his or her testimony
[20] evaluated using the same standards you would use to
[21] evaluate that of any other witness. Would you
[22] accept and follow that instruction?
[23] **A.** Yes. After the way you explained it and I
[24] understood it, my initial tendency because law
[25] officers are sworn to uphold the law.

[1] Commonwealth v. John In
[2] - - -
[3] (Whereupon, prospective juror number 5
[4] exits the room)
[5] - - -
[6] **THE COURT:** Counsel, this is a very
[7] different matter. His hardship is denied.
[8] - - -
[9] (pause)
[10] - - -
[11] **THE CRIER:** Defense alternate strike.
[12] - - -
[13] (Whereupon prospective juror no. 6
[14] enters the room at this time.)
[15] - - -
[16] **THE CRIER:** State your name.
[17] **PROSPECTIVE JUROR NO. 6:** Warren Smith,
[18] Sr.
[19] **BY THE COURT:**
[20] **Q.** Mr. Smith, tell us what you do for a living.
[21] **A.** Delaware River Port Authority.
[22] **Q.** How long have you been doing that?
[23] **A.** 33 years.
[24] **Q.** You have 2 children I see?
[25] **A.** Yes.

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[1] Commonwealth v. John In
[2] **Q.** What age and sex?
[3] **A.** Both male. 31 and 28.
[4] **Q.** What does the 28-year-old do for a living?
[5] **A.** He's a financial, works in finance somewhere.
[6] **Q.** The 31-year-old?
[7] **A.** He's a plumber.
[8] **Q.** I see you have served on a jury before?
[9] **A.** Yeah.
[10] **Q.** How long ago, sir?
[11] **A.** About 7, 8 years ago.
[12] **Q.** Civil or criminal case?
[13] **A.** Civil.
[14] **Q.** You or someone close to you was an eyewitness
[15] to crime?
[16] **A.** Yeah. I think my son.
[17] **Q.** What did he see?
[18] **A.** I think he saw somebody getting robbed.
[19] **Q.** Is there anything what he saw which would
[20] affect your ability to be a fair juror in this case?
[21] **A.** No.
[22] **Q.** If you were selected to serve on this jury,
[23] would you give both sides, the defendant and the
[24] Commonwealth, a fair trial?
[25] **A.** Yes, I would.

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[1] Commonwealth v. John In
[2] **Q.** If you were selected to serve on this jury,
[3] ma'am, would you give both sides, the defendant and
[4] the Commonwealth, a fair trial?
[5] **A.** Yes.
[6] **THE COURT:** Thank you. If you would
[7] wait on the other side of that door. We
[8] will be right with you.
[9] - - -
[10] (Whereupon prospective juror no. 7
[11] exits the room at this time.)
[12] - - -
[13] (pause)
[14] - - -
[15] **THE CRIER:** Panel member number 7 is
[16] juror number 14, second alternate.
[17] **THE COURT:** All right. We can all
[18] stay in place until the remaining panel
[19] members are released. And we can proceed.
[20] I want you to go over the bills of
[21] information, Mr. Giuliani, to speak with
[22] Mr. McNeil as to how he will arraign your
[23] client and speak with your client so we
[24] can have the jury come in, be sworn and
[25] the defendant can be arraigned. And we

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[1] Commonwealth v. John In
[2] **THE COURT:** Thank you, sir. If you
[3] would wait on the other side of the exit
[4] door.
[5] - - -
[6] (Whereupon prospective juror no. 6
[7] exits the room at this time.)
[8] - - -
[9] (pause)
[10] - - -
[11] **THE CRIER:** Number 6 is juror number
[12] 13, alternate number one.
[13] - - -
[14] (Whereupon, prospective juror No. 7 enters
[15] the room at this time)
[16] - - -
[17] **THE CRIER:** State your name.
[18] **PROSPECTIVE JUROR NO. 7:** Laura Veitz.
[19] **BY THE COURT:**
[20] **Q.** Would you tell us what you do for a living?
[21] **A.** I'm a high school English teacher.
[22] **Q.** How long have you been a teacher?
[23] **A.** This will be my sixth year.
[24] **Q.** Private, public or parochial?
[25] **A.** Public.

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[1] Commonwealth v. John In
[2] can go right into our case.
[3] **MS. BARALDI:** If I may briefly ask
[4] your Honor regarding schedule for purposes
[5] of my witnesses. I guess we'll do
[6] openings. Should I call a witness prior to
[7] you breaking for lunch or how would you
[8] like to set that up?
[9] **THE COURT:** I really don't know. I
[10] mean it's 11 now. It depends on how long
[11] your openings and how long your first
[12] witness will be. I'd like to work until
[13] 12:30 before lunch. If it looks like you
[14] have a witness on, we can complete him
[15] before lunch, work until one.
[16] **THE COURT:** Mr. Giuliani, will you be
[17] opening after the Commonwealth?
[18] **MR. GIULIANI:** Yes, I will be.
[19] **THE COURT:** All right.
[20] **THE COURT:** Counsel, I heard you say
[21] the testimony should last about 3 days.
[22] And the rule is if it lasts more than 2
[23] days the jurors will be allowed to take
[24] notes. Is that your understanding?
[25] **MR. GIULIANI:** Yes, it is.

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[1] Commonwealth v. John In
[2] **THE COURT:** Is that what you want?
[3] **MR. GIULIANI:** Yes.
[4] **MS. BARALDI:** Yes.
[5] **THE COURT:** There will be note taking.
[6] I don't have any rules written in
[7] stone or cement. It's your case. If you
[8] want to start before lunch, if you want to
[9] start after lunch, up to you.
[10] We're going to just restate for the record
[11] some preliminary matters. Then we will
[12] bring the jury out, counsel, and have them
[13] sworn and your client arraigned.
[14] Let the record reflect we concluded
[15] selection of our jury in
[16] CP-51-CR-0004768-2007, the case of the
[17] Commonwealth versus John In. Mr. In is
[18] here represented by Mr. Giuliani. The
[19] Commonwealth by Miss Baraldi. Let's have
[20] Mr. In sworn in.
[21] **THE CRIER:** State your full name,
[22] spell your last.
[23] **THE DEFENDANT:** John In. I-N.
[24] - - -
[25] (defendant sworn)

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[1] Commonwealth v. John In
[2] of the first degree.
[3] **THE COURT:** Thank you, ma'am. You
[4] have a motion on Count 4, sir?
[5] **MR. GIULIANI:** I would move to sever
[6] that count from the remaining bills to be
[7] held in abeyance by the court.
[8] **THE COURT:** Mr. In, you understand
[9] that your attorney has moved to sever, so
[10] that no prejudice to you since 6105 will
[11] require the Commonwealth to show that you
[12] have a prior conviction.
[13] **THE DEFENDANT:** Yes.
[14] **THE COURT:** Is that your understanding
[15] by severing this case, this charge out,
[16] you cannot later raise the double jeopardy
[17] issue?
[18] **THE DEFENDANT:** Yes, your Honor.
[19] **THE COURT:** Very well. Motion
[20] granted. That is severed. You will not
[21] be arraigned on Count 4.
[22] We may bring the jury out.
[23] - - -
[24] (jury in the box at approximately
[25] 11:30 a.m.)

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[1] Commonwealth v. John In
[2] - - -
[3] **THE COURT:** Thank you. You may be
[4] seated. Miss Baraldi, state for the
[5] record the charges you are moving on and
[6] count and grading.
[7] **MS. BARALDI:** Yes, your Honor.
[8] The Count 2 of the bill, possession of
[9] an instrument of crime; Count 3 of the
[10] bills, 6108, carrying a firearm on the
[11] public streets of Philadelphia as a
[12] misdemeanor of the first degree. Count 4,
[13] possession of a firearm by a prohibited
[14] person, which is section 6105. Count 7,
[15] Violation of the Uniform Firearms Act;
[16] Carrying a firearm without a license,
[17] section 6106, as a felony of the third
[18] degree. Count 9, burglary, felony of the
[19] first degree. Count 11, robbery, felony
[20] of the first degree, victim Vuthary Yun.
[21] Count 20, robbery, felony of the first
[22] degree, the victim being Dina Khem.
[23] Count 26, robbery as a felony of the first
[24] degree, the victim being Christina Khem.
[25] Count 29, criminal conspiracy as a felony

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[1] Commonwealth v. John In
[2] - - -
[3] **THE COURT:** Good morning ladies and
[4] gentlemen.
[5] **THE CRIER:** Raise your right hand.
[6] - - -
[7] (jury panel sworn)
[8] - - -
[9] **THE COURT:** You may be seated. You
[10] may continue, sir.
[11] **THE CRIER:** John In, to this bill of
[12] information docket CP-51-CR-0004829 of the
[13] year 2007, charging you with possession of
[14] an instrument of crime, how do you plead?
[15] **THE DEFENDANT:** Not guilty.
[16] **THE CRIER:** John In, to this same bill
[17] of information, same docket number,
[18] charging with you carrying a firearm on a
[19] public street in Philadelphia, how do you
[20] plead?
[21] **THE DEFENDANT:** Not guilty.
[22] **THE CRIER:** John In, to this same bill
[23] of information, same docket number,
[24] charging you with firearm not to be
[25] carried without a license, how do you

[1] Commonwealth v. John In
[2] plead?
[3] **THE DEFENDANT:** Not guilty.
[4] **THE CRIER:** John In, to this same bill
[5] of information and docket number charging
[6] you with burglary, the property being 720
[7] Mifflin Street, how do you plead?
[8] **THE DEFENDANT:** Not guilty.
[9] **THE CRIER:** John In, to this same bill
[10] of information and docket number charging
[11] you with robbery, the victim being Vuthary
[12] Yun, how do you plead?
[13] **THE DEFENDANT:** Not guilty.
[14] **THE CRIER:** John In, to this same bill
[15] of information and same docket number
[16] charging you with robbery, the victim
[17] being Dina Khem, how do you plead?
[18] **THE DEFENDANT:** Not guilty.
[19] **THE CRIER:** John In, to this same bill
[20] of information and docket number charging
[21] you with robbery, the victim being
[22] Christina Khem, how do you plead?
[23] **THE DEFENDANT:** Not guilty.
[24] **THE CRIER:** John In, to this same bill
[25] of information and same docket number,

[1] Commonwealth v. John In
[2] crimes is not evidence against him. The
[3] evidence will unfold here in this
[4] courtroom for the edification of you,
[5] ladies and gentlemen of the jury.
[6] Furthermore, the defendant in this
[7] case is presumed innocent throughout the
[8] trial and that presumption continues
[9] unless and until the Commonwealth proves
[10] his guilt beyond a reasonable doubt. So
[11] the defendant has no burden to prove that
[12] he is not guilty. Instead, it is the
[13] Commonwealth that has the burden of
[14] proving each and every element of the
[15] crimes charged and that the defendant is
[16] guilty of those crimes beyond a reasonable
[17] doubt.
[18] Finally, ladies and gentlemen, the
[19] defendant in a criminal case has a right
[20] of silence at trial. You may not hold it
[21] against this defendant should he exercise
[22] his right of silence and not testify at
[23] this trial.
[24] Now, ladies and gentlemen of the jury,
[25] you are about to perform one of the most

[1] Commonwealth v. John In
[2] charging you with criminal conspiracy, how
[3] do you plead?
[4] **THE DEFENDANT:** Not guilty.
[5] **THE CRIER:** Jurors, your Honor, the
[6] defendant at the bar of the court has pled
[7] not guilty to all of the charges. Mr. In,
[8] how do you wish to be tried, by judge or
[9] jury?
[10] **THE DEFENDANT:** By this jury.
[11] **THE COURT:** Thank you. You may be
[12] seated. Good morning ladies and
[13] gentlemen. The first order of business is
[14] for you to put away all writing books.
[15] You will have access only when the
[16] witnesses commence their testimony.
[17] Now, ladies and gentlemen, I must give
[18] you some preliminary instructions in the
[19] law and I shall give you continuous
[20] instruction throughout this trial as they
[21] may be needed. I want you to understand
[22] that a fundamental principle of our system
[23] of criminal law is a defendant is presumed
[24] to be innocent. So the mere fact that
[25] John In has been arrested and charged with

[1] Commonwealth v. John In
[2] **serious duties of citizenship:** You are
[3] you are going to decide whether the
[4] defendant is or is not guilty of the
[5] crimes charged against him by the
[6] Commonwealth of Pennsylvania.
[7] The way that you jurors perform your
[8] duty as a jury is as important to the
[9] administration of justice as the way that
[10] I perform my duty as judge, the way Miss
[11] Baraldi performs her duty as prosecutor,
[12] and the way Mr. Giuliani performs his duty
[13] as defense counsel. So, please, members
[14] of the jury, pay close attention to
[15] everything that is said and done in this
[16] courtroom so that you jurors can well
[17] perform your duties.
[18] I'm going to describe for you in a
[19] general way what will take place during
[20] the course of this trial. First of all,
[21] at the conclusion of these instructions,
[22] the assistant district attorney, Miss
[23] Baraldi, will make her opening statement
[24] to you in which she will outline for you
[25] the Commonwealth's case against the

[1] Commonwealth v. John In
[2] defendant. The defense attorney may make
[3] an opening statement either immediately
[4] following the remarks of the prosecutor or
[5] later in the trial. Thereafter, the
[6] Commonwealth of Pennsylvania attorney will
[7] commence the presentation of evidence.
[8] She may call witnesses to testify and if
[9] appropriate offer exhibits, physical items
[10] and the like. Counsel for the defendant,
[11] Mr. Giuliani, has a right to cross-examine
[12] any witness called by the assistant
[13] district attorney in order to test the
[14] truthfulness and other accuracy of the
[15] evidence or testimony.
[16] After the assistant district attorney
[17] has concluded presentation of the
[18] Commonwealth's case, defense counsel may
[19] present evidence for the defendant. But
[20] you must remember that the defendant has
[21] no obligation to offer evidence or to
[22] testify himself. The assistant district
[23] attorney, of course, has the right to
[24] cross-examine any witness that might be
[25] called by the defense. After all the

[1] Commonwealth v. John In
[2] trial when you deliberate to evaluate the
[3] evidence and to decide from that evidence
[4] what the facts are. You will then apply
[5] the rules of law which I shall give you to
[6] those facts and then determine whether the
[7] Commonwealth has or has not proven the
[8] defendant's guilt beyond a reasonable
[9] doubt.
[10] In order to decide the facts of this
[11] case, you will be called upon to judge
[12] credibility, to pass upon the weight and
[13] effect of testimony and any other
[14] witnesses called and any other evidence
[15] presented in the case. Again, by
[16] credibility I mean truthfulness and
[17] accuracy. When you judge credibility you
[18] will determine whether you believe some or
[19] all of the witness' testimony. You will
[20] also determine how important that
[21] testimony is to the resolution of the
[22] issues before you. Please, ladies and
[23] gentlemen, use your understanding of human
[24] nature and your own common sense to this
[25] end. Observe witnesses as they testify.

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[2] evidence has been presented, the attorneys
[3] for both sides will then have opportunity
[4] to make their closing arguments to you. I
[5] will give you my final charge which will
[6] include instructions on the rules of law
[7] that apply to this case and whatever
[8] additional guidance I think you will need
[9] for your deliberations. You will then
[10] retire to the jury room to deliberate and
[11] to decide what your verdicts will be in
[12] this case.
[13] Jurors, under our system of criminal
[14] justice, it is my responsibility during
[15] this trial to decide all questions of law.
[16] And you must on your sacred oath both
[17] accept and follow my rulings with regard
[18] to the law whether or not you agree with
[19] them. You should remember, jurors, that I
[20] am not the judge of the facts in this
[21] case. So it is not for me to decide what
[22] the facts are concerning the charges
[23] against this defendant. You, jurors, are
[24] the only judges of the facts. So it will
[25] be your responsibility at the end of this

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[2] Be alert to anything in their testimony
[3] and their behavior generally which will
[4] assist you in deciding whether you believe
[5] some, all, or none of his or her
[6] testimony.
[7] Members of the jury, you have been
[8] distributed note pads and pens which were
[9] placed under your chair. In the event you
[10] wish to take notes during the trial, you
[11] are under no obligation to take notes so
[12] it is entirely up to each of you whether
[13] you wish to take notes to help you
[14] remember what witnesses said and to use
[15] during your deliberations. You may not,
[16] of course, access those note pads until
[17] the testimony commences. If you do not
[18] take notes remember -- strike that.
[19] Remember that one of your responsibilities
[20] as a juror is to observe the demeanor of
[21] witnesses to help you assess their
[22] credibility. So do not become so involved
[23] with note taking that it interferes with
[24] your ability to observe a witness or to
[25] distract you from hearing the questions

[1] Commonwealth v. John In
[2] asked of the witness and the answer
[3] provided by the witness. Your notes may
[4] help you refresh your recollection of the
[5] testimony and should be treated as a
[6] supplement to rather than a substitute for
[7] your memory. Your notes are only to be
[8] used by you as memory aids and should not
[9] take precedent over your independent
[10] recollection of the evidence. Those of
[11] you who do not take notes should not be
[12] influenced by the notes of other jurors.
[13] It is just as easy to write something down
[14] incorrectly as it is to remember it
[15] incorrectly. Your fellow juror has no
[16] greater weight than each juror's
[17] independent recollection. Although you
[18] may refer to your notes during
[19] deliberations, give no more or no less
[20] weight to the view of a juror just because
[21] that juror did or did not take notes.
[22] Although you are permitted to use your
[23] notes for your deliberations, the only
[24] notes you may use are the notes you write
[25] in this courtroom during these proceedings

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[2] jurors, do not talk with each other about
[3] the evidence or any matter relating to
[4] whether or not the defendant has or has
[5] not been proven guilty beyond a reasonable
[6] doubt until I send you to the jury room to
[7] deliberate upon your verdict. The reason
[8] for that is clear. Only then will you
[9] know what you need to know about both the
[10] evidence and the law in order to discuss
[11] the case fairly and intelligently. When
[12] you deliberate on your verdict, the law
[13] allows you to consider only the evidence,
[14] arguments and instructions that were
[15] properly presented to you. So you must
[16] avoid anything that might result or even
[17] appear to result in your being exposed to
[18] outside information or influence.
[19] Specifically, jurors, do not discuss
[20] this case with anyone. Don't discuss it
[21] with your friends, family members,
[22] business associates, employees. Do not
[23] discuss the case with anyone.
[24] Now, we do not expect there to be any
[25] media coverage of this case.

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[2] on the materials which have been
[3] distributed to you by the staff. Each
[4] time we adjourn your notes will be
[5] collected and secured by court staff.
[6] Your notes are completely confidential and
[7] neither I nor the attorneys nor any member
[8] of the court staff will ever read your
[9] notes, now or in the future. In fact,
[10] after you have reached your verdict in
[11] this case, your notes will be destroyed
[12] immediately by the court staff.
[13] Ladies and gentlemen, we do have a
[14] court reporter who is taking down an
[15] official transcript of these proceedings.
[16] So if you should miss a question as it's
[17] asked or answer as given, please raise
[18] your hand immediately and we will read
[19] back whatever it is you may have just
[20] missed.
[21] Each of you on your oath must keep an
[22] open mind throughout this trial. You
[23] should avoid forming opinions about any
[24] disputed question until the trial is over
[25] and you commence deliberations. So,

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[2] Nevertheless, I give you the following
[3] **instruction**: Please do not read, listen
[4] to or watch anything that might be in the
[5] media about this case. Do not try to get
[6] information relevant to this case on your
[7] own. Don't go to the scene. Don't
[8] conduct your own investigation. Don't do
[9] any research. Don't try any experiment.
[10] Jurors, it's most important that the only
[11] information you have in the jury room when
[12] you deliberate on your verdict is the same
[13] information that we all saw and heard here
[14] together in this courtroom during the
[15] trial. If you should be approached by
[16] someone, anyone, or if you should see or
[17] hear something you think you should not
[18] have seen or heard, please notify one of
[19] the court officers about it immediately
[20] and he will bring it to my attention and I
[21] will in the presence of these two
[22] attorneys question you about the matter.
[23] If you think you saw or heard something
[24] you should not have heard or seen, don't
[25] go back to the jury room and tell your

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[2] fellow jurors what it is you saw or heard.
[3] Because if after we question you it
[4] becomes necessary to excuse you, hopefully
[5] we can proceed with this case in your
[6] absence without having to start all over
[7] again.
[8] Statements made by the attorneys,
[9] ladies and gentlemen, do not constitute
[10] evidence. Those statements are not
[11] binding upon you. In fact, the questions
[12] which the attorneys ask of the witnesses
[13] are not themselves evidence. Rather, it
[14] is the witness's answer which provides the
[15] evidence for your consideration.
[16] Sometimes there will be objections. One
[17] attorney will object to a question asked
[18] by the other attorney. If I overrule that
[19] objection, then you may consider the
[20] answer to the question. On the other
[21] hand, if I sustain the objection to a
[22] question, I will not allow an answer to be
[23] given and if one has already be given, I
[24] will most likely direct you to disregard
[25] it. You must do so.

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[2] will invite you jurors to go in the
[3] deliberation room so you can be
[4] comfortable and the attorneys and I can
[5] take up the matter here in open court.
[6] Jurors, there are certain persons with
[7] whom you should have absolutely no
[8] contact. You should have no contact with
[9] the defendant, the defense attorney, the
[10] Commonwealth's attorney, any and all
[11] witnesses in the case, nor may you have
[12] any contact with this judge. If for
[13] whatever reason you wish to contact me or
[14] bring something to my attention, you must
[15] first bring the matter to the attention of
[16] a court officer. He or she will bring it
[17] to my attention and then I will address
[18] your concern in the presence of these two
[19] attorneys.
[20] You have no doubt discovered given the
[21] architecture of this building it is
[22] possible that you will encounter perhaps
[23] in the corridor one or both of the
[24] attorneys in this case and you will
[25] observe they will not engage you. Please

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[2] It is possible, ladies and gentlemen,
[3] that I might question a witness myself.
[4] Any such question will not reflect and it
[5] is not intended to reflect any opinion on
[6] my part about this case, the evidence or
[7] that witness. The only purpose of which I
[8] would make an inquiry of a witness would
[9] be to clarify a matter for you.
[10] Ladies and gentlemen of the jury, from
[11] time to time the attorneys and I may to
[12] take up matters outside of your presence.
[13] Please don't speculate as to why we do
[14] this. I'll tell you now. The only reason
[15] I take up matters outside the presence of
[16] the jury at side-bar, as it's called, is
[17] to ensure you, ladies and gentlemen,
[18] receive evidence in a fair and impartial
[19] manner. When we have the side-bars, they
[20] will be conducted in one of three ways:
[21] Either I will call the attorneys to the
[22] bench to my right side or left side, or
[23] take them into the robing room outside of
[24] your presence. Or if the matter appears
[25] to be one which will consume some time I

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[2] don't hold it against them. They're not
[3] being rude. They understand the need to
[4] avoid even the appearance of impropriety.
[5] It is important that you appreciate
[6] that we take seriously your comfort. If
[7] at any time during the course of this
[8] trial, you need a break immediately, you
[9] need to stand, you need to stretch, you
[10] need water, you need a tissue, you need to
[11] visit the facilities, do not hesitate to
[12] raise your hand. We will make every
[13] effort to accommodate you.
[14] Now that concludes these preliminary
[15] instructions and I instruct you to listen
[16] carefully and that you follow the
[17] instructions to the letter.
[18] What will happen next is that the
[19] attorneys will make their opening
[20] speeches. Thereafter, the evidence will
[21] commence. After the attorneys have
[22] concluded their evidence, you may, if you
[23] wish, to take notes, access your notes
[24] from under the chair and take notes.
[25] At this juncture I will turn to the

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[2] attorneys. Miss Baraldi, are you ready to
[3] address the jury?
[4] **MS. BARALDI:** Yes. Thank you, your
[5] Honor.
[6] - - -
[7] (Opening statements commence -- NOT
[8] TRANSCRIBED)
[9] - - -
[10] **THE COURT:** Thank you, Mr. Giuliani.
[11] Miss Baraldi, you may call your first
[12] witness.
[13] **MS. BARALDI:** Thank you. At this time
[14] the Commonwealth calls Christina Khem.
[15] **THE CRIER:** State your full name and
[16] spell your last name.
[17] **THE WITNESS:** Christina Khem,
[18] K-h-e-m. C-h-r-i-s-t-i-n-a.
[19] - - -
[20] CHRISTINA KHEM, after having been first
[21] duly sworn, was examined and testified as
[22] follows:
[23] - - -
[24] DIRECT EXAMINATION
[25] - - -

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[2] **A.** Keith Khem.
[3] **Q.** About a year and a half ago, how old were you
[4] back then?
[5] **A.** Sixteen.
[6] **Q.** 5 o'clock in the morning. Where were you?
[7] **A.** In my bed sleeping.
[8] **Q.** Your house at 720 Mifflin Street is a typical
[9] Philadelphia row home, is that correct?
[10] **A.** Yes.
[11] **Q.** How many floors is it?
[12] **A.** It's two.
[13] **Q.** Where was your bedroom located?
[14] **A.** On the second floor.
[15] **Q.** How many bedrooms on the second floor?
[16] **A.** Three.
[17] **Q.** Of those three, where was your situated?
[18] **A.** Middle.
[19] **Q.** Was anybody sleeping in the room with you?
[20] **A.** No.
[21] **Q.** What woke you up?
[22] **A.** I was asleep and then two men came into my
[23] room. So I woke up. And then I just saw two men in
[24] front of me. I thought I was dreaming. I went back
[25] to sleep. And then one of the guys told me to wake

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[2] **THE COURT:** You may proceed.
[3] **MS. BARALDI:** Thank you, your Honor.
[4] **BY MS. BARALDI:**
[5] **Q.** Good afternoon, Chris.
[6] **A.** Good afternoon.
[7] **Q.** How you doing?
[8] **A.** Fine.
[9] **Q.** I'm going to ask that you keep your voice up
[10] so everybody can hear you and the court reporter has
[11] to take down everything you are saying.
[12] **A.** Okay.
[13] **Q.** Pull the microphone a little bit closer to
[14] you. Chris, I want to take you back to March 7,
[15] 2007. At that time where did you live?
[16] **A.** 720 Mifflin Street.
[17] **Q.** That's here in Philadelphia?
[18] **A.** Yes.
[19] **Q.** Who did you live with?
[20] **A.** My dad, my sisters and my little brother.
[21] **Q.** What is your dad's name?
[22] **A.** Vuthary Yun.
[23] **Q.** What are your two sisters' names?
[24] **A.** Dina Khem and Angela Khem.
[25] **Q.** Your brother?

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[2] up. Get up. Be quiet.
[3] **Q.** Now, is there anything you can tell us about
[4] those two guys? What were they wearing?
[5] **A.** One of them had a green sweatshirt on and the
[6] other one had a blue Adidas sweatshirt on.
[7] **Q.** Any other further description other than green
[8] sweatshirt?
[9] **A.** Uh-uh.
[10] **Q.** Can you tell me their race?
[11] **A.** Black.
[12] **Q.** Which was taller of the two?
[13] **A.** The green sweatshirt.
[14] **Q.** Is that the one that spoke to you?
[15] **A.** Yes.
[16] **Q.** Did you, at this point did you see anything in
[17] their hands?
[18] **A.** No.
[19] **Q.** After he tells you to get up, what do you do?
[20] **A.** I got up. I was still sitting in bed. Sat
[21] up.
[22] **Q.** I see you are wearing glasses today. Did you
[23] wear glasses back then?
[24] **A.** No.
[25] **Q.** Did you have a prescription for glasses a year

[1] Commonwealth v. John In
[2] and a half ago?
[3] **A.** Yes.
[4] **Q.** At this time did you have glasses on?
[5] **A.** No.
[6] **Q.** What happened? Did you reach for your
[7] glasses?
[8] **A.** No. The green sweatshirt guy, he takes my
[9] jewelry off my pillow I lay it on.
[10] **Q.** Did he ask for your jewelry?
[11] **A.** Yes.
[12] **Q.** What did you take off specifically?
[13] **A.** I took off my rings and my charm bracelet and
[14] that's it.
[15] **Q.** You put them on a pillow next to you?
[16] **A.** Yes.
[17] **Q.** Which of the two men grabbed the jewelry?
[18] **A.** Green sweatshirt.
[19] **Q.** Who is closer to you?
[20] **A.** I would say both had the same distance. Close
[21] to me.
[22] **Q.** After the man in the green sweatshirt takes
[23] your jewelry, what happened next?
[24] **A.** He goes into my dad's room. It's connected to
[25] my room.

[1] Commonwealth v. John In
[2] room and then he asked me where the money and
[3] jewelry's at.
[4] **Q.** Who asked you?
[5] **A.** The green sweatshirt guy.
[6] **Q.** What did you say, anything?
[7] **A.** I said, I don't have any. I don't have any.
[8] That's what I told him.
[9] **Q.** Your brother Keith is still asleep at this
[10] point?
[11] **A.** Yes.
[12] **Q.** What happened next?
[13] **A.** And then he opened my dad's closet doors.
[14] **Q.** When you say "he," who?
[15] **A.** Green sweatshirt. And then he opens my dad's
[16] closet doors and he said: Where's the money and
[17] jewelry at? I was like, we don't have any. I don't
[18] know. We don't have any. He said, well, you
[19] better tell me something or your dad's going to die.
[20] That's what he said to me. Afterwards we heard
[21] something from downstairs and it was the police
[22] **calling up. He said:** Did somebody call the cops?
[23] And so one of the guys they ran into the hallway and
[24] they said no, nobody called the cops.
[25] **Q.** Which guy said this?

[1] Commonwealth v. John In
[2] **Q.** This would be towards the front of the house
[3] on Mifflin Street?
[4] **A.** Yes.
[5] **Q.** If I understand you correctly, the two rooms
[6] are connected; he doesn't have to go into a hallway?
[7] **A.** No.
[8] **Q.** Was anyone in your father's room?
[9] **A.** My brother. He was sleeping on the bed.
[10] **Q.** How old was your brother back then?
[11] **A.** I think he was 11.
[12] **Q.** This is your brother Keith?
[13] **A.** Yes.
[14] **Q.** The man in the green sweatshirt took your
[15] jewelry, goes into your's father bedroom?
[16] **A.** Yes.
[17] **Q.** What about the guy in the blue Adidas
[18] sweatshirt?
[19] **A.** He stood there and watched me and saw I didn't
[20] have my glasses on. I was like: Can I put on my
[21] glasses? And then he thought about it a little bit.
[22] He was like, no. I just sat up there. He looked at
[23] me. Then he walked forward to go into my dad's room
[24] but then the green sweatshirt guy told him, tells me
[25] to go there too. Then I follow him into my dad's

[1] Commonwealth v. John In
[2] **A.** I'm not sure.
[3] **Q.** Where are you?
[4] **A.** I'm still in the room.
[5] **Q.** That's where? In your father's room?
[6] **A.** Yes.
[7] **Q.** One of the two men run out and respond to the
[8] police saying no one called the police?
[9] **A.** Yes.
[10] **Q.** What happened?
[11] **A.** And then I was near the doorway, the doorway
[12] that's connected to the doorway. Two doorway's in
[13] my dad's room. One's connected to my room and the
[14] hallway. Then I was like right next to that
[15] doorway. The green sweatshirt guy, he came over and
[16] he put the knife next to my waist.
[17] **Q.** There was a knife?
[18] **A.** A gun. Next to my waist. And then he said,
[19] don't say nothing. He covered my mouth. He had
[20] latex gloves on. Yeah.
[21] **Q.** Did you get a look at the gun?
[22] **A.** No.
[23] **Q.** Was that the first time you had seen the gun?
[24] **A.** Yes.
[25] **Q.** How did you know it was a gun?

[1] Commonwealth v. John In
[2] **A.** When he put it to me, I could see a glance.
[3] It's like a slight glance at it. I could tell it
[4] was a gun.
[5] **Q.** He put it to -- you're pointing to your right
[6] side?
[7] **A.** Yes, the right side.
[8] **Q.** He put his hands over your mouth?
[9] **A.** Yes.
[10] **Q.** At this point the police are still upstairs?
[11] **A.** Yes.
[12] **Q.** What happens next?
[13] **A. The police say:** Did anybody call the cops?
[14] And then after they said no, nobody called the cops,
[15] the police asked us again. Keeps asking. And then
[16] eventually she says, the police officer was a female
[17] voice. She says we got a call from the basement and
[18] somebody call for the cops. And then he ran out
[19] into the hallway to the back room.
[20] **Q.** Which "he"?
[21] **A.** The green sweatshirt guy. So he released me
[22] and then afterwards after he went into the back
[23] room. I ran downstairs and there was a group of
[24] cops right at my front door and then they were like
[25] inside my living room and so I ran into the group of

[1] Commonwealth v. John In
[2] anything to you?
[3] **A.** As soon as he reached the shoe place, oh shit,
[4] what's happening. He ran out the house. I thought
[5] it was a cop.
[6] **Q.** Were all the police officers that were there
[7] in uniform at that time?
[8] **A.** Yes.
[9] **Q.** This person did not have a uniform on?
[10] **A.** No.
[11] **Q.** Other than dark clothing, any further
[12] description?
[13] **A.** No. His head was covered though.
[14] **Q.** Covered with what?
[15] **A.** A hood or something.
[16] **Q.** Do you remember if anything covered that
[17] person's face?
[18] **A.** I don't remember.
[19] **Q.** Can you give me any approximate height or
[20] description further than dark clothing?
[21] **A.** No. But he was tall.
[22] **Q.** You know it was a male?
[23] **A.** Yes.
[24] **Q.** At the point you had this interaction with
[25] that male, where are you in the room?

[1] Commonwealth v. John In
[2] **police. I was like:** Help me. And they were like
[3] where are the, where are they. I, I pointed
[4] upstairs and I said the back room. They went to the
[5] back room and then I guess he wasn't there. They
[6] came back downstairs, went towards my kitchen, which
[7] leads to the backyard. And they open the door. It
[8] was a whole bunch of chaos with police and stuff.
[9] **Q.** After you come downstairs you are in the
[10] living room. Which of your family is in the living
[11] with you?
[12] **A.** Angela. Sleeping on couch.
[13] **Q.** This is your sister?
[14] **A.** Yes.
[15] **Q.** How old is she?
[16] **A.** She was 15 I believe at the time.
[17] **Q.** So you are in your living room with Angela as
[18] police someone upstairs and other officer runs to
[19] the back?
[20] **A.** Yes.
[21] **Q.** What happens next?
[22] **A.** After the police go to the backyard, I see a
[23] guy in a, dressed in dark clothing run past me. I
[24] thought it was a cop, so it didn't really bother me.
[25] **Q.** Did the person in the dark clothing say

[1] Commonwealth v. John In
[2] **A.** Standing at the doorway next to my shoe place
[3] like possibly for you to walk out.
[4] **Q.** This is your front door of your house?
[5] **A.** It's like a front door which is a gated door.
[6] And then it's a white door and it's leading out and
[7] then a wooden door, second door and then another
[8] door.
[9] **Q.** You have a small vestibule in your house?
[10] **A.** Yes.
[11] **Q.** There is probably a space how big between
[12] those two doors?
[13] **A.** About you could see like a yard and a foot.
[14] **Q.** At this time you are standing by the front
[15] interior door to the vestibule? Is that fair to
[16] say?
[17] **A.** By front interior, what do you mean?
[18] **Q.** Inside your house?
[19] **A.** Yeah.
[20] **Q.** If anyone was to walk out that door they would
[21] be in the vestibule area to leave your house, is
[22] that fair?
[23] **A.** Yeah.
[24] **Q.** A person runs by you?
[25] **A.** Yeah.

[1] Commonwealth v. John In
[2] **Q.** And says, oh, shit, what is going on, and then
[3] leaves?
[4] **A.** Yeah. As he's running.
[5] **Q.** Now, your jewelry, did you get your jewelry
[6] back?
[7] **A.** No.
[8] **Q.** Did you ever go look for it?
[9] **A.** Yeah. I went to the backyard to look for it.
[10] I figured maybe he might have tossed it out. I
[11] couldn't find it. It was snowing that day.
[12] **Q.** Other than jewelry was anything else of yours
[13] taken?
[14] **A.** No.
[15] **MS. BARALDI:** If I could have the
[16] court's indulgence for a minute.
[17] **THE COURT:** Yes.
[18] **MS. BARALDI:** Thank you, Chris. I
[19] don't have any further questions.
[20] **THE COURT:** Cross-examine.
[21] - - -
[22] CROSS-EXAMINATION
[23] - - -
[24] **MR. GIULIANI:**
[25] **Q.** Thank you, your Honor. Good afternoon, Miss

[1] Commonwealth v. John In
[2] you can?
[3] **A.** No. A group of them.
[4] **Q.** You are testifying very clearly. It was very
[5] scary, wasn't it?
[6] **A.** Yes.
[7] **Q.** You were frightened?
[8] **A.** Yes.
[9] **Q.** You saw a group of police officers in your
[10] home?
[11] **A.** Uh-huh.
[12] **Q.** Did you see one or more go up the steps after
[13] you ran down?
[14] **A.** Yeah. I think a few of them ran up the steps.
[15] **Q.** When you came down to the ground floor, I
[16] think you testified your younger sister is asleep on
[17] the couch in the front?
[18] **A.** Yes.
[19] **Q.** Did you see your father at this point in time?
[20] **A.** No.
[21] **Q.** Did you have any idea at that point in time
[22] where he was?
[23] **A.** No.
[24] **Q.** At that point in time did you have any idea
[25] whether he or other people were in the basement?

[1] Commonwealth v. John In
[2] Khem.
[3] **A.** Good afternoon.
[4] **Q.** I have a couple questions for you. You
[5] yourself are upstairs when this happens?
[6] **A.** Yes.
[7] **Q.** Two guys you describe. One with a green
[8] sweatshirt?
[9] **A.** Yes.
[10] **Q.** One with a blue one?
[11] **A.** Yes.
[12] **Q.** As far as you can recall, the blue sweatshirt
[13] guy you didn't see any latex gloves on his hands?
[14] **A.** His hands were in his pockets.
[15] **Q.** The green sweatshirt guy didn't have latex
[16] gloves on?
[17] **A.** Yeah. When he covered my mouth, I saw that.
[18] **Q.** You felt it when it touched your mouth?
[19] **A.** I can see it. It was like this.
[20] **Q.** You told the jury about what they said to you.
[21] At some point when the green sweatshirt guy releases
[22] you after the police came, you ran down your steps?
[23] **A.** Yes.
[24] **Q.** When you ran down the steps, do you recall how
[25] many police officers you saw inside your home, if

[1] Commonwealth v. John In
[2] **A.** No.
[3] **Q.** You said you saw a group of officers run
[4] upstairs?
[5] **A.** Yes.
[6] **Q.** Did you see one or more of the officers stay
[7] on the first floor?
[8] **A.** Yeah. They with me.
[9] **Q.** Where did they go immediately afterward?
[10] **A.** After the group ran upstairs a few of them
[11] came back down. The rest of them ran to the back.
[12] I was just standing thereby myself.
[13] **Q.** When you say ran to the back. The home what I
[14] call a typical Philadelphia row home, walk in, a
[15] living room there?
[16] **A.** Yes.
[17] **Q.** And then eventually the living room like a
[18] separation, turn into the kitchen?
[19] **A.** It's connected to each other. It's like the
[20] living room when you walk in living room TV on this
[21] side and then when you walk in like a cabinet there
[22] and then a open section where you can walk through
[23] to the kitchen. No door. No nothing.
[24] **Q.** It's kind of like a separate room, kitchen and
[25] living room?

[1] Commonwealth v. John In
[2] **A.** I guess you can say that.
[3] **Q.** If you go to the kitchen going towards of back
[4] of the house?
[5] **A.** Yes.
[6] **Q.** Is there a back door to go from the kitchen
[7] out to your yard?
[8] **A.** Yes.
[9] **Q.** That's directly from the kitchen?
[10] **A.** Yes.
[11] **Q.** Is there also opening for stairwell to go down
[12] to your basement?
[13] **A.** Yes.
[14] **Q.** Between kitchen and dining room or kitchen and
[15] living room area?
[16] **A.** It's in the kitchen actually because of the
[17] door of the basement when you walk into the kitchen
[18] if you turn left and walk you can open the door and
[19] walk down.
[20] **Q.** Is it fair to say that to go out from the
[21] kitchen, it's the only back door in the home?
[22] **A.** Yes.
[23] **Q.** If you go out the back door then a smaller
[24] yard, fence around it?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] **Q.** Fair enough. I think you said that he ran
[3] past you and said oh shit?
[4] **A.** Yes. Oh shit. What's happening.
[5] **Q.** You didn't get really any kind of look at him
[6] except dark clothes and tall?
[7] **A.** Yes.
[8] **Q.** What is your height today?
[9] **A.** Five-four.
[10] **Q.** Back in March of 2007 were you approximately
[11] the same height?
[12] **A.** Yes.
[13] **Q.** When you say the guy was tall, Would you say
[14] he was kind of tall like me, about my height, if you
[15] can remember? If you can remember.
[16] **A.** I actually don't remember.
[17] **Q.** You do know he was taller than you?
[18] **A.** Yes. Slightly.
[19] **Q.** Now, after this was all done, there came a
[20] point in time when the police actually took you to a
[21] location maybe a block, a block and a half away,
[22] asked you to look at a couple people?
[23] **A.** Yes.
[24] **Q.** When they took you to the location, 6th and
[25] Mifflin?

[1] Commonwealth v. John In
[2] **Q.** When the officer ran towards the back, they
[3] entered the kitchen that you saw?
[4] **A.** Yes.
[5] **Q.** They went out that back door?
[6] **A.** Yes.
[7] **Q.** None of them at this point in time you saw
[8] went down to the basement?
[9] **A.** No.
[10] **Q.** When they went out the door, you there by
[11] yourself?
[12] **A.** Yes.
[13] **Q.** Then you say -- this is important. I'm
[14] talking about this other person, this guy ran past
[15] you?
[16] **A.** Yes.
[17] **Q.** Did you see where he came from?
[18] **A.** He came from the kitchen.
[19] **Q.** Was he in the kitchen when the officers went
[20] through the kitchen to the back door?
[21] **A.** No.
[22] **Q.** Do you know whether or not he came up from the
[23] basement?
[24] **A.** No. But I saw just running from the direction
[25] of the kitchen. That's it.

[1] Commonwealth v. John In
[2] **A.** I don't remember.
[3] **Q.** You know it was within a couple blocks?
[4] **A.** Yes.
[5] **Q.** You were taken to a location. They showed you
[6] two individuals, two males?
[7] **A.** Yes.
[8] **Q.** When you looked at those two males, where were
[9] the males, inside the back of police wagon?
[10] **A.** Yes.
[11] **Q.** They open the door. The officers said we want
[12] you to look at these two males. Tell us if you can
[13] identify them?
[14] **A.** Yes.
[15] **Q.** They told you, they told you before you got
[16] there before they showed the males to you, right,
[17] they said, we want you to look at people, tell us if
[18] any of these guys you recognize from inside the
[19] house?
[20] **A.** Actually I don't remember.
[21] **Q.** You do remember looking at the males?
[22] **A.** Yes.
[23] **Q.** You looked at them and is it fair to say that
[24] the people you looked at you couldn't recognize?
[25] **A.** I didn't identify them cause I couldn't

[1] Commonwealth v. John In
[2] recognize.
[3] **Q.** In fact, you gave a written statement to the
[4] police later that morning, a couple hours later?
[5] **A.** Yes.
[6] **Q.** You sat down with detective division and they
[7] asked you questions right?
[8] **A.** Yes.
[9] **Q.** The detective I believe was sitting there at a
[10] computer typing up questions answers?
[11] **A.** Yes.
[12] **Q.** Showed you the statement afterwards. You had
[13] a chance to sign it?
[14] **A.** Yes.
[15] **Q.** I want to ask if you remember this following
[16] question and answer. Question 11 page 2. The
[17] **question was:** Did you ever see any of these males
[18] again after the police arrived? And your answer was
[19] **the following:** The police took us to see if we knew
[20] any of the males they had. The guy who was wearing
[21] the green sweatshirt was sitting in the back of the
[22] police van with another guy who I never saw.
[23] **A.** Yes.
[24] **Q.** You understand that?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] whom you identify as being the green sweatshirt guy
[3] you told we?
[4] **A.** Yes.
[5] **Q.** Let's be clear. The green sweatshirt guy is
[6] not him?
[7] **A.** No.
[8] **Q.** The other person when you look at him, not the
[9] green sweatshirt, the other person in the back of
[10] the van, you look at him and you had never seen that
[11] guy before?
[12] **A.** Yes.
[13] **Q.** That other person who you never saw before in
[14] the back of that van that morning, that is John In,
[15] is it not?
[16] **A.** Yes.
[17] **Q.** The man you saw run out the front door --
[18] **A.** Yes.
[19] **Q.** -- he would have to have run through a
[20] vestibule that Miss Baraldi talked about that leads
[21] out front?
[22] **A.** Yes.
[23] **Q.** Thank you, Miss Khem. No further questions.
[24] **THE COURT:** Any redirect?
[25] **MS. BARALDI:** I do not.

[1] Commonwealth v. John In
[2] **Q.** The guy as you sit there today, the guy who
[3] was in the back -- there were two males in the back,
[4] one you know was the green sweatshirt guy?
[5] **A.** Yes.
[6] **Q.** Although when he was in the back of that
[7] police van he was not wearing a green sweatshirt?
[8] **A.** No.
[9] **Q.** You know that's him, that's the green
[10] sweatshirt guy?
[11] **A.** The reason I know it's him, the police officer
[12] told me that the green sweatshirt was taken off of
[13] him. That's why they had the green sweatshirt in
[14] the wagon in the back when he was just sitting
[15] there. They told me it came off of him.
[16] **Q.** The other guy that says, that you say you
[17] never saw before?
[18] **A.** I never saw before.
[19] **Q.** As you sit here today, Miss Khem, the other
[20] guy in the back of the van who they asked you to
[21] look at who you are telling the jury you never saw
[22] before, you told the police you never saw before,
[23] that is John In, this man sitting to my right?
[24] **A.** Repeat your question.
[25] **Q.** The two people in the back of the van, one of

[1] Commonwealth v. John In
[2] **THE COURT:** Thank you, ma'am. You may
[3] step down.
[4] - - -
[5] (witness steps down)
[6] - - -
[7] **THE COURT:** Ladies and gentlemen, it's
[8] coming up on 12:30. I think we will take
[9] our lunch recess now, have an hour for
[10] lunch. If you would please re-assemble
[11] on the second floor at, let's say, 1:35.
[12] We can start promptly thereafter. Enjoy
[13] your lunch.
[14] - - -
[15] Jury leaves the box at approximately
[16] 12:25).
[17] - - -
[18] (luncheon recess)
[19] - - -
[20] (afternoon session)
[21] - - -
[22] **THE COURT:** We're back on the record
[23] in the case of Commonwealth versus In.
[24] Mr. In is here with his attorney, Mr.
[25] Giuliani. Miss Baraldi for the

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[1] Commonwealth v. John In
[2] Commonwealth. Miss Baraldi, who will the
[3] next witness be?
[4] **MS. BARALDI:** Vuthary Yun.
[5] **THE COURT:** Will you be using the
[6] interpreter in that case?
[7] **MS. BARALDI:** Yes, your Honor.
[8] **THE COURT:** What is the language that
[9] your witness speaks?
[10] **MS. BARALDI:** Cambodian.
[11] **THE COURT:** Mr. Giuliani, we will be
[12] using an official Cambodian court
[13] interpreter. Do you anticipate voir dire?
[14] **MR. GIULIANI:** No, your Honor.
[15] **THE COURT:** Sir, would you tell us
[16] your name.
[17] **INTERPRETER:** Daniel Kao, K-a-o.
[18] **THE COURT:** When we come back, once
[19] the jury is brought in, we'll give him the
[20] interpreter's oath and then we will have
[21] him assist in swearing the witness.
[22] Sir, one of the things I wanted to
[23] bring to your attention is sometimes a
[24] witness has been in the country for a
[25] while and speaks some English. So before

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[1] Commonwealth v. John In
[2] **THE COURT:** Good afternoon, ladies
[3] and gentlemen. You may be seated.
[4] Miss Baraldi, you may call your next
[5] witness.
[6] **MS. BARALDI:** The Commonwealth calls
[7] Mr. Yun.
[8] **THE COURT:** Will you be using an
[9] interpreter?
[10] **MS. BARALDI:** Yes, your Honor.
[11] **THE COURT:** Ladies and gentlemen, the
[12] witness will be assisted by an
[13] interpreter. So we will first swear in
[14] the interpreter and he will assist us
[15] thereafter.
[16] **THE CRIER:** State your full name and
[17] spell your last name.
[18] **THE INTERPRETER:** Daniel Kao. K-a-o.
[19] - - -
[20] (interpreter sworn)
[21] - - -
[22] **THE CRIER:** State your full name,
[23] spell your last name.
[24] **THE WITNESS:** Vuthary Yun. Y-u-n.
[25] - - -

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[1] Commonwealth v. John In
[2] we get started, I'm going to tell Miss
[3] Baraldi to instruct her client not to
[4] attempt to answer in English but to allow
[5] the process to go as follows: She will
[6] ask a question in English. You will then
[7] translate that question for the witness
[8] in Cambodian. He will answer in
[9] Cambodian. You will then answer as his
[10] answer was in English for the edification
[11] of the jury, the court and the lawyers, as
[12] well as the defendant. Is that how you
[13] normally do it?
[14] **THE INTERPRETER:** Yes.
[15] **THE COURT:** Any questions or concerns?
[16] **MR. GIULIANI:** None, your Honor.
[17] **THE COURT:** You have no questions
[18] about the interpreter's qualifications?
[19] **MR. GIULIANI:** I do not, your Honor.
[20] **THE COURT:** All right. That should be
[21] easy enough.
[22] - - -
[23] (jury in the box at approximately 1:50
[24] p.m.)
[25] - - -

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[1] Commonwealth v. John In
[2] (Vuthary Yun, after having been first duly
[3] sworn through the interpreter, was
[4] examined and testified as follows:
[5] - - -
[6] DIRECT EXAMINATION
[7] - - -
[8] **THE COURT:** Sir, would you instruct
[9] the witness that in the event that he
[10] understands some English to avoid
[11] answering what he thinks to be the
[12] question to allow the lawyer to put the
[13] question to him in English. Then you will
[14] translate that question in Cambodian for
[15] the witness. The witness will answer in
[16] Cambodian. Then you will provide the
[17] jury, the court, lawyers and defendant
[18] with that answer in English. Would you
[19] advise him of that?
[20] **THE INTERPRETER:** Yes.
[21] **THE COURT:** Mr. Giuliani, do you have
[22] any questions of our interpreter?
[23] **MR. GIULIANI:** No, your Honor.
[24] **THE COURT:** The court certifies him as
[25] an official Cambodian court interpreter.

[1] Commonwealth v. John In
[2] You may proceed.
[3] **BY MS. BARALDI:**
[4] **Q.** Thank you, your Honor. Good afternoon, Mr.
[5] Yun. I would like to take you back to March 7, 2007
[6] at about 5 o'clock in the morning. Were you at
[7] home?
[8] **A.** I was at home.
[9] **Q.** Is your home, was your home at that time
[10] located the address of 720 Mifflin street here in
[11] Philadelphia?
[12] **A.** Yes.
[13] **Q.** A about 5 o'clock that morning were you have
[14] in your kitchen?
[15] **A.** Yes.
[16] **Q.** Can you please tell the ladies and gentlemen
[17] of the jury what happened?
[18] **A.** Do you want me to speak in English or
[19] Cambodian?
[20] **MS. BARALDI:** In Cambodian.
[21] **THE WITNESS:** While I was in the
[22] kitchen, someone pointing the gun on my
[23] head. There was three people got into my
[24] house. As soon I turn my face to them and
[25] then they point the gun to my head right

[1] Commonwealth v. John In
[2] **Q.** How many of those men took you into the
[3] basement?
[4] **A.** (In English) only one took me to the
[5] basement.
[6] **MS. BARALDI:** Mr. Yun, I understand
[7] that you understand some English. What I
[8] need you to do, I need to ask the question
[9] in English and the interpreter will
[10] interpret in Cambodian. You will answer
[11] in Cambodian. The interpreter will
[12] interpret in English. I understand you
[13] understand some of what I'm saying.
[14] **BY MS. BARALDI:**
[15] **Q.** So, one of the three men with guns took you
[16] into the basement. You get down the steps to the
[17] floor. What happens then?
[18] **A.** While I was at the floor to the steps of the
[19] basement and they, one of them kept pointing the gun
[20] at my head. And then he tie me up and then asking
[21] me more about jewelry and the cash. And also tie my
[22] mouth also.
[23] **Q.** How were you positioned in the basement?
[24] **A.** (Indicating).
[25] **THE COURT:** Let the record reflect the

[1] Commonwealth v. John In
[2] away.
[3] **BY MS. BARALDI:**
[4] **Q.** Did you see these men enter your house?
[5] **A.** Yes. As soon I turn my face I saw them.
[6] Three of them.
[7] **Q.** My question to you, did you see them come
[8] inside or were they already there when you first
[9] noticed them?
[10] **A.** At that time I was doing dishes. As soon I
[11] turn like this and then the gun right on my head.
[12] **Q.** Did one of the men say anything to you?
[13] **A.** The one who point the gun on my head told me
[14] to shut up.
[15] **Q.** Can you give any description other than the
[16] fact there was three men?
[17] **A.** They were wearing dark gray type of sweater
[18] with the hood on.
[19] **Q.** After one of the men told you to shut up, what
[20] happened next?
[21] **A.** At the same time while they were pointing the
[22] gun at my head, they pushing me to the basement.
[23] While I was on the way to the basement, after I got
[24] to the step of the basement they demand me to give
[25] them money.

[1] Commonwealth v. John In
[2] witness crouched on the floor to
[3] demonstrate to the jury the manner in
[4] which he was tied. If you want to
[5] elaborate, go ahead.
[6] **MS. BARALDI:** I think that is
[7] sufficient, your Honor.
[8] **BY MS. BARALDI:**
[9] **Q.** So your hands are tied behind your back?
[10] **A.** Yes. Just like this.
[11] **Q.** You are crouching forward, your head is pretty
[12] much between your legs?
[13] **A.** He said, shut the fuck up. Tied me up.
[14] **Q.** At this point in time, there is a gun pointed
[15] to the back of your head?
[16] **A.** Yeah. Right here. All the time.
[17] **Q.** We all heard you say in English that you were
[18] told to shut the fuck up.
[19] **A.** I don't have money. "Shut the fuck up."
[20] **Q.** This whole time you are only in the basement
[21] with one other person; is that correct?
[22] **A.** Just only one.
[23] **Q.** What happens next?
[24] **A.** While I was sitting on the step of the
[25] basement, my daughter came out from the room in the

[1] Commonwealth v. John In
[2] basement and then say to me pa, and then I told her
[3] just be quiet.
[4] **Q.** Are you at this point, are you still sitting
[5] -- what step of the basement are you sitting on?
[6] **A.** The floor. And then the first step. First
[7] step from the floor. That's where I was sitting.
[8] **Q.** Are you sitting on the first step from the
[9] basement floor or the first floor from the kitchen
[10] floor?
[11] **A.** From the top floor to the basement.
[12] **Q.** It's the first step from the kitchen then?
[13] **A.** From the top down to the basement.
[14] **Q.** You had originally told us that you were
[15] brought all the way downstairs. That is where you
[16] were tied up; is that correct?
[17] **A.** Yes. First he brought me to the floor of the
[18] basement. After he tie me up he brought me back up
[19] to the step up to the floor, upstairs floor.
[20] **Q.** Now, your daughter that comes out, is this
[21] your daughter Dina?
[22] **A.** Yeah, Dina. Yes. Dina came out from the
[23] room. I believe she heard the noise.
[24] **Q.** Did the person who had the gun to your head
[25] say anything to Dina that you can recall?

[1] Commonwealth v. John In
[2] **A.** Yes. All of it.
[3] **Q.** Was anything else taken out of your wallet?
[4] **A.** No.
[5] **Q.** Where was your wallet located?
[6] **A.** The wallet was inside my pant pocket. After
[7] that I saw it on the table upstairs.
[8] **Q.** Did you take your wallet out and hand it to
[9] one of the men with the gun or did they remove the
[10] wallet from you?
[11] **A.** I took it out from my pocket.
[12] **Q.** Did that happen in the kitchen or did that
[13] happen in the basement?
[14] **A.** Actually the wallet was in my pant pocket but
[15] I was not wearing that pant. It was on the bed.
[16] And then I found it later. It was on the table.
[17] **Q.** If I am to understand your correctly, your
[18] pants -- the wallet was located in your pants on
[19] the second floor?
[20] **A.** The wallet was in my pants upstairs. After
[21] everything I saw my wallet on the table in the
[22] kitchen.
[23] **Q.** Were you able to see the face of the man that
[24] had you in the basement?
[25] **A.** I could not identify that man because he was

[1] Commonwealth v. John In
[2] **A.** He said something, something like, shut up,
[3] but I was not sure about it.
[4] **Q.** From your position you're facing your
[5] daughter; is that correct?
[6] **A.** Yes.
[7] **Q.** The person who has the gun is behind you; is
[8] that correct?
[9] **A.** Yes, right behind.
[10] **Q.** Is it fair to say behind him then would be the
[11] basement door?
[12] **A.** Yes. The door behind the men point the gun.
[13] **Q.** Do you hear any noise upstairs at this point?
[14] **A.** I was not sure if I heard anything. I was not
[15] sure.
[16] **Q.** After Dina comes out and the man with the gun
[17] says something to her, like shut up or something
[18] like that, what happens next?
[19] **A.** After a little bit I talk to Dina not to talk,
[20] anything. And then it sound like the cop was coming
[21] into the house or something like that.
[22] **Q.** Was anything taken from you?
[23] **A.** At that time I had about \$60 in my wallet on
[24] me.
[25] **Q.** The money was taken from the wallet?

[1] Commonwealth v. John In
[2] wearing the hood like this and I did not try to look
[3] at his face because I was told not to do so with the
[4] gun point.
[5] **Q.** Were you injured as a result of this incident?
[6] **A.** No. It was lucky the cop came so early that
[7] time.
[8] **Q.** You said that you were tied up. Do you know
[9] what you were tied up with?
[10] **A.** With the red string.
[11] **Q.** Did that read string come from your house, do
[12] you remember?
[13] **A.** I believe from my house in the basement.
[14] **Q.** What was it that was placed around your mouth?
[15] **A.** A cloth.
[16] **MS. BARALDI:** If I could have this
[17] marked as C-1.
[18] **THE CRIER:** Marked as Exhibit C-1,
[19] shown to defense. Showing it to the
[20] witness.
[21] **BY MS. BARALDI:**
[22] **Q.** Do you recognize this?
[23] **A.** Yes. That was the string I was tied with.
[24] **Q.** Could you give us a description of the gun?
[25] **A.** Just by a quick glance, just black type of

[1] Commonwealth v. John In
[2] gun. It looked like police type of gun.
[3] **MS. BARALDI:** Thank you, Mr. Yun. I
[4] don't have any further questions.
[5] **THE COURT:** You may cross-examine.
[6] **MR. GIULIANI:** Thank you, your Honor
[7] - - -
[8] CROSS-EXAMINATION
[9] - - -
[10] **BY MR. GIULIANI:**
[11] **Q.** Good afternoon, Mr. Yun. Your bedroom is
[12] upstairs in this house?
[13] **A.** Yes.
[14] **Q.** Is that where you slept that night before you
[15] got up at 5 a.m.?
[16] **A.** Yes.
[17] **Q.** When you woke up at 5 did you go right
[18] downstairs to the kitchen?
[19] **A.** Yes. I went down to the kitchen, do some
[20] cooking, do dishes.
[21] **Q.** At that time of morning on March 7 it was
[22] still dark out, the sun was not yet up; is that
[23] correct?
[24] **A.** I believe it was Wednesday early in the
[25] morning and it was snowing really bad.

[1] Commonwealth v. John In
[2] like you said?
[3] **A.** It's about, about, yeah, it's about 15
[4] minutes.
[5] **Q.** You didn't hear any banging on the front door,
[6] correct?
[7] **A.** No, no. I didn't know those people got in. I
[8] didn't hear anything at all.
[9] **Q.** So you know in your house that when those
[10] people show up behind they must have walked in the
[11] front door and it must have been open already,
[12] correct?
[13] **A.** I really can't figure out because I don't know
[14] how long they been inside already. When I got into
[15] the kitchen and then I saw them right away from the
[16] front and point a gun to me.
[17] **Q.** Is it fair to say you did not get a good look
[18] at the three males who came in?
[19] **A.** No. As soon I turn my face like this and
[20] point the gun right away. I was so scare. I
[21] couldn't move at all.
[22] **Q.** You do know the three males there, there was
[23] one who was taller than the other two, correct?
[24] **A.** All I remember tall and one of the tall point
[25] the gun to me.

[1] Commonwealth v. John In
[2] **Q.** When you go into your kitchen, you turn on a
[3] light to be able to see what you are doing, correct?
[4] **A.** Yes, I turn on the light.
[5] **Q.** When you go into the kitchen, there is a back
[6] door to your house that is light there, correct?
[7] **A.** You mean the door to go out another one?
[8] **Q.** Yes, sir.
[9] **A.** Yeah.
[10] **Q.** When you are in the kitchen cooking and doing
[11] dishes, you notice no one came in through your back
[12] door, correct?
[13] **A.** No. No one came in through the back door. If
[14] they came in, got to be from the front door.
[15] **Q.** There is also some windows in your kitchen,
[16] correct?
[17] **A.** Yes, yes.
[18] **Q.** Because it was cold out and snowing you
[19] wouldn't have had them open that morning, correct?
[20] **A.** Right. It was not open.
[21] **Q.** When you went down into the kitchen, you
[22] didn't notice there were any windows open?
[23] **A.** I did not pay attention.
[24] **Q.** So you are in the kitchen for maybe 15 minutes
[25] before the males come up behind you with the gun

[1] Commonwealth v. John In
[2] **Q.** You recognized that it was the tallest of the
[3] three who point the gun at you and brought you down
[4] to the basement?
[5] **A.** I believe the tallest one point the gun to me
[6] and brought me downstairs.
[7] **MR. GIULIANI:** Your Honor, may I have
[8] this marked as Defense Exhibit 1.
[9] **THE COURT:** Yes.
[10] **THE CRIER:** D-1.
[11] **MR. GIULIANI:** May it be shown to the
[12] witness.
[13] **THE COURT:** Yes.
[14] **BY MR. GIULIANI:**
[15] **Q.** Take a look at that and when you have had a
[16] chance to look at it, let me know.
[17] **A.** Do I, to read only the top one.
[18] **Q.** I'll ask you some questions about the
[19] statement. After the police came and after this
[20] incident was done, you went to give a statement to
[21] the detectives, is that correct?
[22] **A.** Yes.
[23] **Q.** In fact, if you look on this statement, by the
[24] way, this statement is completely in English, is it
[25] not?

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** Do you recognize this as the statement that
[4] you gave to the detectives later that morning?
[5] **A.** Yeah, yeah. That's the statement I gave.
[6] **Q.** When you spoke to the detectives, did you have
[7] the assistance of an interpreter?
[8] **A.** No. I spoke with him by myself.
[9] **Q.** When you said you spoke to him by yourself,
[10] were you speaking and talking to him in English?
[11] **A.** Yes. I did speak in English.
[12] **Q.** Did you understand his question?
[13] **A.** Yes, I could.
[14] **Q.** He asked you questions, correct?
[15] **A.** Yes.
[16] **Q.** You answered in English?
[17] **A.** Yes.
[18] **Q.** He typed those questions and answers on a
[19] computer?
[20] **A.** Yes.
[21] **Q.** Then he had the statement printed out?
[22] **A.** I did not remember they print it out but I
[23] remember they type something.
[24] **Q.** This statement that you have in your hands is
[25] two pages, correct?

[1] Commonwealth v. John In
[2] **Q.** That is your handwriting for the date and
[3] time?
[4] **A.** That's my signature.
[5] **Q.** I want to go down to the first page to the
[6] last question, question 4. You were asked this
[7] **question:** Can you describe the male that point the
[8] gun at you? Your answer, your answer was: He was a
[9] lot taller than me.
[10] **A.** Yes.
[11] **Q.** Black male, 19, 20 years old?
[12] **A.** Yes. I told the police.
[13] **Q.** Skinny?
[14] **A.** Yes, yes.
[15] **Q.** And finally you say he was wearing a dark
[16] colored hoodie and blue jeans?
[17] **A.** That's what I say because it happened so
[18] quick. That's what I recall.
[19] **Q.** You can put the statement down, sir. Mr. Yun,
[20] there came a time where you also went to court on
[21] this case at a previous occasion and testified?
[22] **A.** Yes.
[23] **Q.** It was before a different judge, actually in a
[24] different building, correct?
[25] **A.** It looks familiar here.

[1] Commonwealth v. John In
[2] **A.** Yeah.
[3] **Q.** Do you see a signature on the second page?
[4] **A.** It's my signature, yes. I didn't remember. I
[5] was, signed the paper right away.
[6] **Q.** Look at the first page at the top. It says on
[7] the left-hand side, it says, place of interview:
[8] South detectives division. Do you remember going to
[9] 24th and Wolf to give the statement?
[10] **A.** The police station.
[11] **Q.** Do you see on the right-hand side it says,
[12] date?
[13] **A.** I remember the day. It was snowing.
[14] **Q.** It says 7:07?
[15] **A.** That day it was snowing.
[16] **Q.** It says time 8:50 a.m. right next to it. Do
[17] you see that, sir?
[18] **A.** It was about that time.
[19] **Q.** You gave this statement just maybe three hours
[20] after the incident?
[21] **A.** Yes, about that.
[22] **Q.** Do you see on the second page next to your
[23] signature there is also a date written in and a
[24] time. Do you see that sir?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] **Q.** If I told you that you testified on April 18
[3] at 2007 would that be about correct?
[4] **A.** What date you refer to?
[5] **Q.** The date that you went to court and testified
[6] the first time.
[7] **A.** I really don't remember. It's been a while.
[8] **Q.** Do you remember coming to court?
[9] **A.** Yes.
[10] **Q.** And your daughter Dina and Christina were
[11] there too?
[12] **A.** Yes, yes.
[13] **Q.** When you went to court and you testified that
[14] time?
[15] **A.** Yes, I did. Asking me what was happened.
[16] **Q.** You had assistance of an interpreter just like
[17] you do today?
[18] **A.** Yes.
[19] **Q.** I'm going to ask you if you remember the
[20] following question and answer from your testimony on
[21] that day. By the way, the attorney for the
[22] Commonwealth that day was Miss Baraldi just like
[23] she's here today, correct?
[24] **A.** Yes, yes.
[25] **Q.** She asked you the following question. On page

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[1] Commonwealth v. John In
[2] **34. She asked you:** Describe the clothing the
[3] person had on who was down in the basement with you.
[4] **Your answer was:** It was dark. Black sweater.
[5] **A.** It looks dark.
[6] **Q.** Black sweater to cover his head?
[7] **A.** Yes, yes. Just like this.
[8] **Q.** I want to bring you to another question and
[9] answer later on. Page 36. Do you remember this
[10] question and answer.
[11] "QUESTION: Which guy pointed the gun
[12] at you?"
[13] Do you remember the following answer:
[14] When I turned my head to him, I saw one
[15] guy taller than everybody point the gun on
[16] me.
[17] Do you remember that question and
[18] answer?
[19] **A.** Yeah, I told everybody that the one who point
[20] the gun to me, so I turn my face, is tall, taller
[21] than everyone.
[22] **Q.** A further question and answer just afterwards.
[23] The tall --
[24] "QUESTION: The tallest guy that
[25] pointed the gun at you is wearing a dark

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[1] Commonwealth v. John In
[2] guy next to him
[3] **BY MR. GIULIANI:**
[4] **Q.** When you were taken into the basement, is
[5] there a light on in the basement?
[6] **A.** Yes. The light's on.
[7] **Q.** Was the light on when you went in the basement
[8] or did somebody turn it on?
[9] **A.** I did not know but when I got down there, the
[10] light was already on. I didn't know who turn on the
[11] light or...
[12] **Q.** Now, when you go to the bottom of the steps,
[13] are you able to see your daughter Dina as she is
[14] sleeping?
[15] **A.** No. She was in her room. I couldn't see her.
[16] **Q.** She came out of her room before long?
[17] **A.** Yes. The man with the gun asking me something
[18] about money next to the wall and he also asked me
[19] who was in the room. I told him it's my daughter.
[20] **Q.** Dina did walk out of her room at some point?
[21] **A.** At that time Dina did not come out from the
[22] room yet. She came out when the gunman took me to
[23] the step next to the first floor and then at that
[24] time she came out.
[25] **Q.** Is there a basement door?

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[1] Commonwealth v. John In
[2] black sweatshirt or sweater that you
[3] described; is that correct?
[4] "ANSWER: Yes."
[5] **THE WITNESS:** Yes, I said that.
[6] **BY MR. GIULIANI:**
[7] **Q.** Your answer was yes on that day?
[8] **A.** Yes.
[9] **MR. GIULIANI:** With the court's
[10] permission, may my client stand for a
[11] moment and face the jury.
[12] **THE COURT:** He may.
[13] **MR. GIULIANI:** Stand up, John.
[14] Do you see the gentleman standing to
[15] my right?
[16] **THE WITNESS:** Yes.
[17] **MR. GIULIANI:** Which one of us is
[18] taller, myself or my client?
[19] **THE WITNESS:** You taller.
[20] **MR. GIULIANI:** You're right. Would
[21] you agree with me, sir, that the guy who
[22] pointed the gun at you was tall like me?
[23] **THE WITNESS:** Like I told you, as soon
[24] as I turn my head towards the guy, the guy
[25] point the gun to me. Seem taller than the

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[1] Commonwealth v. John In
[2] **A.** Yes, the basement. Yes, a door.
[3] **Q.** You have heard the police coming in the house?
[4] **A.** Actually, I did not pay attention about the
[5] police getting to the house. But I hear some noise.
[6] **Q.** When you heard the noise, you were still at
[7] the top of the steps with the man with the gun right
[8] behind you?
[9] **A.** Yes. At that time I was staying still but to
[10] be honest I really didn't know if he still there or
[11] not.
[12] **Q.** Okay. Was the door to the basement open or
[13] closed at that time?
[14] **A.** The gunman did hold the doorknob of the
[15] basement and then the door just -- like that. And I
[16] turn my face just a little bit. I was so afraid to
[17] move my head.
[18] **MS. BARALDI:** Thank you. That's all I
[19] have.
[20] **THE COURT:** Any redirect?
[21] **MS. BARALDI:** No, your Honor.
[22] **THE COURT:** Thank you, sir. You may
[23] step down.
[24] - - -
[25] (witness steps down)

[1] Commonwealth v. John In
[2] - - -
[3] **THE COURT:** You may call your next
[4] witness.
[5] **MS. BARALDI:** If I may, would you see
[6] if Detective Conn is outside. If not, I
[7] would call Dina Khem.
[8] **THE CRIER:** State your full name,
[9] spell your last name.
[10] **THE WITNESS:** Dina Khem. K-h-e-m.
[11] - - -
[12] DINA KHEM, after having
[13] been first duly sworn, was examined and
[14] testified as follows:
[15] - - -
[16] DIRECT EXAMINATION
[17] - - -
[18] **BY MS. BARALDI:**
[19] **Q.** Good afternoon, Dina.
[20] **A.** How you doing?
[21] **Q.** Dina, I want to take you back to March 7th of
[22] 2007. Were you living at 720 Mifflin Street?
[23] **A.** Yes.
[24] **Q.** About 5 o'clock in the morning, were you
[25] asleep?

[1] Commonwealth v. John In
[2] **Q.** So you have to walk the length of the basement
[3] to get to your door, is that fair to say?
[4] **A.** Say that again.
[5] **Q.** You would have to walk the length of the
[6] basement to the front of your house to get to your
[7] door?
[8] **A.** Yeah.
[9] **Q.** Is that entire walkway also walled off?
[10] **A.** Like, yeah, it's like a wall. It's a wall
[11] right here with books. And wall where my room is
[12] at.
[13] **Q.** Where is your bed located in that enclosed
[14] area in the basement?
[15] **A.** My door is like to the front and then my bed
[16] is like next to the wall where the dresser is at.
[17] If you talk you can hear everything.
[18] **Q.** If I come down your basement, I see the
[19] dresser, a wall there?
[20] **A.** Yes.
[21] **Q.** On the other side of that wall is your bed?
[22] **A.** Yes.
[23] **Q.** If I'm standing at the bottom of your
[24] basement, I'm about how many feet from your bed?
[25] **A.** Approximately like six feet at the most.

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** At that time where was your bedroom located?
[4] **A.** In the basement.
[5] **Q.** If you can describe for the ladies and
[6] gentlemen of the jury the layout of your basement?
[7] **A.** Yeah. When you walk down, when you open the
[8] door, it's steps. When you walk down like a
[9] dresser. It looks like it's blocked off, but then
[10] it's like a walkway. My room is all the way around,
[11] walk to the front and turn, make a right and that's
[12] my door.
[13] **Q.** If I were coming down your basement steps,
[14] would I see a bedroom door?
[15] **A.** No.
[16] **Q.** If I come down the steps, what is in front of
[17] me?
[18] **A.** A dresser.
[19] **Q.** Is there a wall there too?
[20] **A.** Yes, behind the dresser.
[21] **Q.** Do you have to go left or right to get to your
[22] bedroom door?
[23] **A.** If you going down the steps, you go to go left
[24] and then you got to go straight, then you got to
[25] make a right.

[1] Commonwealth v. John In
[2] **Q.** So that morning you are awakened by a voice?
[3] **A.** Yes.
[4] **Q.** What do you hear?
[5] **A. I hear is:** Where your money, where your
[6] jewelry at. I heard my dad saying, I'm poor. I
[7] ain't got no money. Shut the fuck up.
[8] **Q.** What did you do when you hear that?
[9] **A.** I pick up my phone and call the cops.
[10] **Q.** So you call 911?
[11] **A.** Uh-huh.
[12] **Q.** What did you tell them?
[13] **A.** I told them a robbery in my house. I'm in the
[14] basement.
[15] **Q.** After you call the police, what do you do?
[16] **A.** I stayed in my room.
[17] **Q.** How long were you in your room?
[18] **A.** Approximately five to seven minutes. That's
[19] when I heard a lady say: Did anybody call the cops?
[20] **Q.** That's the point you exit your room?
[21] **A.** Like I hesitate for a little bit. When I
[22] walked to the steps where my dad was tied up and
[23] where he was at.
[24] **Q.** You waited to leave your bedroom until you
[25] hear voices upstairs?

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** You exit your bedroom door, you walk around
[4] the corner to the bottom of the steps. Where is
[5] your dad?
[6] **A.** My dad is on top of the basement steps, like
[7] it's like seven steps. It's like he's on the top
[8] one. The guy is standing holding the doorknob.
[9] **Q.** Do you see that person here today?
[10] **A.** Correct. Yeah.
[11] **Q.** Can you point to him?
[12] **A.** Over there.
[13] **MS. BARALDI:** Indicating for the
[14] record the defendant John In.
[15] **THE COURT:** The record will so
[16] reflect.
[17] **BY MS. BARALDI:**
[18] **Q.** You said seven steps in your basement?
[19] **A.** Yeah, like seven steps at the most.
[20] **Q.** How far would you have been from the
[21] defendant?
[22] **A.** Like what you mean how far?
[23] **Q.** If you point to something in the room or
[24] somebody in the room. How far distance wise when
[25] you got to the bottom of the steps was John In from

[1] Commonwealth v. John In
[2] **Q.** Do you say anything when you come out of your
[3] room?
[4] **A.** No. I didn't say -- Va, dad, in Cambodian.
[5] **Q.** Does your dad saying anything back to you?
[6] **A.** Yes. He said be quiet in Cambodian.
[7] **Q.** Does John In say anything?
[8] **A.** Shut the fuck up.
[9] **Q.** When John In says this to you, is he turned to
[10] face you?
[11] **A.** Like when he say that, I stood there. And
[12] then I stood there for a minute. I walk to my room.
[13] **Q.** He turned to face you. At this point he
[14] points the gun at you?
[15] **A.** Yes.
[16] **Q.** He tells you to shut the fuck up?
[17] **A.** Uh-huh.
[18] **Q.** Describe the gun for me.
[19] **A.** It was black. That's all.
[20] **Q.** How long are you standing there before you go
[21] back in your room?
[22] **A.** Probably like two minutes.
[23] **Q.** Is the basement door at this point shut?
[24] **A.** See, like when I walk out, right, it's like my
[25] other sister, my baby sister, she open the door. I

[1] Commonwealth v. John In
[2] you?
[3] **A.** Like say this, John In right here.
[4] **Q.** Give me feet?
[5] **A.** Four or five, six, something like that.
[6] **Q.** Now, the light is on in the basement?
[7] **A.** Yes.
[8] **Q.** Do you remember where was your dad?
[9] **A.** What you mean?
[10] **Q.** When you first see him?
[11] **A.** On the step.
[12] **Q.** Who is your father facing?
[13] **A.** Facing me towards the basement, not of the
[14] door.
[15] **Q.** The defendant John In is standing where in
[16] relation to your father?
[17] **A.** He's standing like behind him. It's like a
[18] little room. He sitting on the step. He's holding
[19] the doorknob.
[20] **Q.** Do you see his other hand at that point?
[21] **A.** His other hand, what you mean?
[22] **Q.** Do you see John?
[23] **A.** Holding the doorknob. He point the gun at me.
[24] **Q.** In his other hand is a gun?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] seen her face. He pull the door back.
[3] **Q.** This is your sister Angela?
[4] **A.** Yeah.
[5] **Q.** John In is holding the doorknob. At some
[6] point you see your sister try to open the door, he
[7] pulls the door back?
[8] **A.** Uh-huh.
[9] **Q.** At what point in time did this occur, before
[10] or after he points the gun at you?
[11] **A.** I'm not sure.
[12] **Q.** You go back in your bedroom. About how long a
[13] time would you say from the point you come out of
[14] your room you have the interaction with your dad,
[15] have the interaction with John In?
[16] **A.** Like two minutes.
[17] **Q.** When did you come back out of your bedroom?
[18] **A.** When I made a phone call first and then my
[19] sister pick up. I went upstairs.
[20] **Q.** Which sister did you call?
[21] **A.** Angela.
[22] **Q.** The one you had seen at the top?
[23] **A.** Yeah.
[24] **Q.** Did you call on a cell phone or house phone?
[25] **A.** House phone.

[1] Commonwealth v. John In
[2] **Q.** She picked up the house phone?
[3] **A.** Uh-huh.
[4] **Q.** I assume she told you it was all clear, you
[5] could come upstairs?
[6] **A.** Uh-huh.
[7] **THE COURT:** You have to say yes or no.
[8] **BY MS. BARALDI:**
[9] **Q.** When you come upstairs, at that point who is
[10] upstairs on your first floor of your house?
[11] **A.** The cops and my dad and my sister.
[12] **Q.** What about your brother Keith, do you see him?
[13] **A.** Yeah. He was on the couch.
[14] **Q.** Do you remember how many police officers were
[15] there at that time?
[16] **A.** No.
[17] **Q.** Were you present with the interaction with any
[18] other defendant other than John In?
[19] **A.** No.
[20] **Q.** He is the only person you had seen in your
[21] house?
[22] **A.** Yes.
[23] **Q.** At some point you and your sister are taken in
[24] a patrol car; is that correct?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] down to South Detectives and gave a statement?
[3] **A.** Yes.
[4] **Q.** In April probably about a month later you went
[5] down to a different courtroom where you met with me?
[6] **A.** Yes.
[7] **Q.** You were in front of a different judge, you
[8] testified there, as well?
[9] **A.** Yes.
[10] **Q.** Did you have the opportunity to identify John
[11] In that day?
[12] **A.** Yes.
[13] **Q.** Did you identify John In as being the person
[14] in the basement on that day?
[15] **A.** Yes.
[16] **Q.** Did you have anything taken from you have?
[17] **A.** No.
[18] **Q.** Was there anything missing of yours after you
[19] were able go through the house?
[20] **A.** No.
[21] **MS. BARALDI:** I don't have any further
[22] questions.
[23] **THE COURT:** Cross.
[24] - - -
[25] CROSS-EXAMINATION

[1] Commonwealth v. John In
[2] **Q.** You are taken -- tell us what happened.
[3] **A.** They took us to a paddy wagon and they asked
[4] me is that him.
[5] **Q.** How many people are in the back of the paddy
[6] wagon?
[7] **A.** Two.
[8] **Q.** Did you recognize the other male?
[9] **A.** No, I don't know.
[10] **Q.** You recognized John In?
[11] **A.** Yes.
[12] **Q.** Explain to the ladies and gentlemen of the
[13] jury how you know that John In is the guy in your
[14] basement.
[15] **A.** His nose.
[16] **Q.** What about his nose?
[17] **A.** It's sharp.
[18] **Q.** What do you mean?
[19] **A.** It's real, real sharp.
[20] **Q.** Why did his nose stick out for you?
[21] **A.** It just does.
[22] **Q.** Can you describe the clothes he had on?
[23] **A.** I know he had a hoody on and it was dark.
[24] That was it.
[25] **Q.** After you identify him to the police, you went

[1] Commonwealth v. John In
[2] - - -
[3] **BY MR. GIULIANI:**
[4] **Q.** Good afternoon, Miss Khem.
[5] **A.** How you doing.
[6] **Q.** Fine. Thank you. You are asleep that
[7] morning?
[8] **A.** Correct.
[9] **Q.** You are awakened because you hear voices?
[10] **A.** Yes.
[11] **Q.** From the tone of voice and because probably
[12] one of the voices is one you have never heard before
[13] you get a little frightened?
[14] **A.** Yes.
[15] **Q.** Did you recognize him, one of the voices, that
[16] being one of your father's?
[17] **A.** Yes.
[18] **Q.** Did you hear two voices when you were in your
[19] bedroom?
[20] **A.** Yes.
[21] **Q.** Did you recognize immediately that one of
[22] those voices was your father's?
[23] **A.** Yes.
[24] **Q.** You didn't know who the other voice was?
[25] **A.** No.

[1] Commonwealth v. John In
[2] **Q.** So the members of the jury understand, from
[3] where you were in your bedroom when you first woke
[4] up, you can't see your father and the other
[5] individual at that point in time?
[6] **A.** No.
[7] **Q.** At no time or no you can't see?
[8] **A.** No, I can't see .
[9] **Q.** You have a cell phone with you?
[10] **A.** Yes.
[11] **Q.** Do you keep the cell phone with you all night
[12] in case people call you?
[13] **A.** Yes.
[14] **Q.** On the cell phone on dial 911?
[15] **A.** Yes.
[16] **Q.** You speak to an operator for a robbery in
[17] progress, something like that?
[18] **A.** Yes.
[19] **Q.** After you do that you don't go out of your
[20] room?
[21] **A.** No.
[22] **Q.** Not right away?
[23] **A.** Yes.
[24] **Q.** You don't go out of your room according to
[25] your testimony until you hear voices upstairs that

[1] Commonwealth v. John In
[2] black?
[3] **A.** I don't know. I know it was dark.
[4] **Q.** It's your testimony that there is a light on
[5] in the basement?
[6] **A.** Yes.
[7] **Q.** Do you know how that light got on?
[8] **A.** I don't know.
[9] **Q.** Do you remember what time you went to bed the
[10] night before?
[11] **A.** No.
[12] **Q.** Would it be usually -- let me strike that.
[13] Aside from yourself, is there anybody else that's
[14] got a bedroom in your basement?
[15] **A.** Only me.
[16] **Q.** Would it be unusual for the light to be on in
[17] the basement that time of day?
[18] **A.** No. At nighttime I go to the bathroom in the
[19] basement. I don't want to trip over nothing.
[20] **Q.** The person on the steps who you identify as
[21] Mr. In, he doesn't ask you or demand any money from
[22] you?
[23] **A.** No.
[24] **Q.** Miss Baraldi mentioned you testified
[25] previously in April of '07. Do you remember that?

[1] Commonwealth v. John In
[2] you know, as you sit there today, are police
[3] entering your home?
[4] **A.** Yes.
[5] **Q.** You actually heard somebody say: Did somebody
[6] call the cops?
[7] **A.** Yes.
[8] **Q.** It's at that point in time that you first exit
[9] your room?
[10] **A.** Yes.
[11] **Q.** You walk over to the steps?
[12] **A.** Yes.
[13] **Q.** You see your father on the steps?
[14] **A.** Yes.
[15] **Q.** The top step below where I would say where the
[16] kitchen is?
[17] **A.** Yes.
[18] **Q.** You see another individual behind one hand
[19] holding a door and one hand holding a gun?
[20] **A.** Yes.
[21] **Q.** You say that is John In?
[22] **A.** Yes.
[23] **Q.** Now, you testified he's wearing a dark hoody?
[24] **A.** Yes.
[25] **Q.** Would you say the color of that hoody was

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** I want to ask you if you remember the
[4] following questions and answer. Page 44. I'll
[5] start on top of page 43. The first time --
[6] question. Listen to the question. (Reading):
[7] You come out and immediately when you
[8] come out that person says to you to go back. Your
[9] **answer:** Shut the fuck up. The next question is:
[10] Shut the fuck up and go back? And your answer is:
[11] Yes.
[12] Do you remember those questions and
[13] answers?
[14] **A.** No.
[15] **Q.** You remember testifying there don't you?
[16] **A.** Yes, I do.
[17] **Q.** You were under oath like you are just like
[18] today?
[19] **A.** Yes.
[20] **Q.** The only difference that was on April 18th of
[21] last year, five weeks after the incident, right?
[22] **A.** Yes.
[23] **Q.** Here we are almost 18 months later, right?
[24] **A.** Yes.
[25] **Q.** Then the next question: (Reading):

[1] Commonwealth v. John In
[2] Immediately you turn around and go back. Your
[3] **answer is:** Yes. Do you remember that?
[4] **A.** No, I don't remember that.
[5] **Q.** This final question.
[6] "QUESTION: Between the time when you
[7] walk out and he says that to you, that is two or
[8] three seconds?
[9] "ANSWER: Yes. You're right."
[10] Remember that?
[11] **A.** I don't remember it.
[12] **Q.** When this was all happening what, if anything,
[13] did you hear going on upstairs with the cops?
[14] **A.** What you mean?
[15] **Q.** We know the officers entered your home as a
[16] result of your call. They came into the house
[17] saying did someone call the cops. You heard them
[18] scream, did someone call the cops?
[19] **A.** Yes.
[20] **Q.** It's only at that point in time that you come
[21] out of your room, you walk over to the steps, right?
[22] **A.** Correct.
[23] **Q.** It's not very far, right?
[24] **A.** No.
[25] **Q.** Takes you couple seconds to go out to go over.

[1] Commonwealth v. John In
[2] **Q.** You turn around and went back to your room?
[3] **A.** Yes.
[4] **Q.** You go back to the room you stay in, your
[5] room, you make a call. You end up speaking to
[6] Angela?
[7] **A.** Yes.
[8] **Q.** You talk to her. Do you have a conversation,
[9] something like, is everything okay, is it safe to
[10] come up, et cetera?
[11] **A.** Yes.
[12] **Q.** You come back out of your room. Is your dad
[13] still on the steps at that point in time?
[14] **A.** No.
[15] **Q.** Where is he?
[16] **A.** Upstairs.
[17] **Q.** You go up the steps, there is no one else in
[18] the house. You don't see him or any other
[19] individual inside the house?
[20] **A.** No.
[21] **Q.** You go up to the, what I would call the ground
[22] floor?
[23] **A.** Yes.
[24] **Q.** Are there police officers there?
[25] **A.** Yes.

[1] Commonwealth v. John In
[2] You see what you see on the steps. Did you hear any
[3] commotion or ruckus going on upstairs?
[4] **A.** You hear footsteps like somebody moving.
[5] **Q.** Could you tell where they were moving upstairs
[6] inside the house if you could?
[7] **A.** Yeah, you can, you can hear them moving. Like
[8] a regular basement.
[9] **Q.** Did you hear anyone running through the
[10] kitchen, running through the kitchen while you are
[11] there looking up the steps?
[12] **A.** What you mean?
[13] **Q.** Do you hear anybody running through the house?
[14] **A.** When I was standing right in front of my dad?
[15] **Q.** Yes, ma'am.
[16] **A.** I can hear people walk. I can't hear nobody
[17] running.
[18] **Q.** You eventually turn around and go back to your
[19] room?
[20] **A.** What you mean?
[21] **Q.** What I mean is you came out, saw your father
[22] and this other individual on the steps. The other
[23] individual points a gun at you, and said shut the
[24] fuck up, right?
[25] **A.** Yeah.

[1] Commonwealth v. John In
[2] **Q.** How many?
[3] **A.** I don't know. A couple. I'm not sure.
[4] **Q.** Were there police officers out back?
[5] **A.** I didn't go in the back.
[6] **Q.** I didn't say you did. Do you recall whether
[7] any out back?
[8] **A.** I'm not sure.
[9] **Q.** Any on the second floor?
[10] **A.** Yes.
[11] **Q.** Did you ever see your sister Christina at that
[12] point?
[13] **A.** Yes.
[14] **Q.** Where was she?
[15] **A.** Downstairs.
[16] **Q.** How long after that before you were taken by
[17] police to location?
[18] **A.** I'm not sure.
[19] **Q.** Less than an hour?
[20] **A.** Yeah, less than an hour.
[21] **Q.** 20 or 30 minutes, not even?
[22] **A.** I don't know. I'm not sure.
[23] **Q.** You go to a location. Do you remember the
[24] location?
[25] **A.** No.

[1] Commonwealth v. John In
[2] **Q.** Somewhere around 6th and Mifflin, 5th and
[3] Hoffman?
[4] **A.** It's on a small block. It's Mifflin and a
[5] small block.
[6] **Q.** A couple blocks away?
[7] **A.** Uh-huh, yes.
[8] **Q.** When you go there, you are taken there by
[9] police, right?
[10] **A.** Correct.
[11] **Q.** Do you remember which officer took you?
[12] **A.** No.
[13] **Q.** You were in the back of a police cruiser?
[14] **A.** A police car, regular one.
[15] **Q.** Squad car?
[16] **A.** Yeah.
[17] **Q.** Was the officer telling you something along
[18] the lines, we got some guys in custody. We want you
[19] to look at them?
[20] **A.** Yes.
[21] **Q.** They asked you if you could identify either or
[22] both of them in the house?
[23] **A.** Yes.
[24] **Q.** You go to the location. There's a what you
[25] call a wagon, police wagon, right?

[1] Commonwealth v. John In
[2] **A.** He was tall.
[3] **Q.** The other guy who you didn't know?
[4] **A.** Yeah.
[5] **Q.** He was taller than John In?
[6] **A.** Yeah.
[7] **Q.** A lot taller?
[8] **A.** Not a lot, but he was taller.
[9] **Q.** You could tell that even though they were
[10] sitting next to each other in the wagon?
[11] **A.** His knees, you can tell.
[12] **Q.** When you see the person on the steps who you
[13] say is my client, it's your testimony the hoody is
[14] down like this, (indicating), it's not up over his
[15] face or his head?
[16] **A.** Can't remember.
[17] **Q.** You don't recall?
[18] **A.** Can't remember.
[19] **MR. GIULIANI:** Thank you, Miss Khem.
[20] **THE COURT:** Any redirect?
[21] **MS. BARALDI:** I have one question.
[22] - - -
[23] REDIRECT EXAMINATION
[24] - - -
[25] **BY MS. BARALDI:**

[1] Commonwealth v. John In
[2] **A.** Yes.
[3] **Q.** Do you speak to another police officer or
[4] detective before they open up the wagon?
[5] **A.** Yes.
[6] **Q.** Did he say, we want you to identify these
[7] guys?
[8] **A.** Yes.
[9] **Q.** They are sitting inside the wagon or standing?
[10] **A.** Sitting.
[11] **Q.** Did they ask them to step outside?
[12] **A.** No.
[13] **Q.** When you identify him, both inside the wagon?
[14] **A.** Yes.
[15] **Q.** No lights inside, interior lights of that
[16] wagon, are there?
[17] **A.** There was.
[18] **Q.** Were they shining a flashlight on them?
[19] **A.** No. It was light in there.
[20] **Q.** Did they ask them to stand next to each other?
[21] **A.** No.
[22] **Q.** Could you tell the size of the other guy who
[23] was in the back of the wagon?
[24] **A.** The size?
[25] **Q.** Height wise.

[1] Commonwealth v. John In
[2] **Q.** Miss Khem, about how long a period of time do
[3] you think you had to look at John In when he was in
[4] your basement?
[5] **A.** Like two minutes.
[6] **MS. BARALDI:** Thank you. I don't have
[7] any further question.
[8] **THE COURT:** Any question based on her
[9] question, sir?
[10] - - -
[11] RECROSS-EXAMINATION
[12] - - -
[13]
[14] **BY MR. GIULIANI:**
[15] **Q.** I want to get the time line correct. The cops
[16] come in the house. You know that from hearing them
[17] upstairs, correct?
[18] **A.** Yes.
[19] **Q.** It's only after they enter the home that you
[20] come out of your bedroom. You go to the bottom of
[21] the steps. You make visual identification or
[22] inspection of the person who is there with your dad?
[23] **A.** Yes.
[24] **Q.** You are telling Miss Baraldi it's two minutes,
[25] a full two minutes you are just standing there

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[1] Commonwealth v. John In
[2] staring at this man?
[3] **A.** I said about two minutes. I'm not definitely
[4] sure.
[5] **Q.** Two minutes. The guy pointed a gun at you,
[6] according to you, told you to shut the fuck up. But
[7] you just stood there and look up at the steps at
[8] this guy pointing a gun at you. He didn't say
[9] anything else to you, not like turn around, don't
[10] look at me? Just stood there and stared at him for
[11] two whole minutes?
[12] **A.** I had to walk to my room.
[13] **Q.** This obviously is extremely scary when this
[14] happened to you, right?
[15] **A.** Yeah.
[16] **Q.** You are afraid for yourself, your father, the
[17] rest of your family?
[18] **A.** Yes.
[19] **Q.** You saw this guy with a gun pointed at your
[20] father. He tells you to shut the fuck up. As soon
[21] as you see that, you turn right back around and go
[22] back to your room?
[23] **A.** Not if you're shock.
[24] **Q.** I'm asking what you did. You went over. You
[25] saw your dad. You saw the other individual, this

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[1] Commonwealth v. John In
[2] in the judge's robing room)
[3] - - -
[4] **THE COURT:** We're on the record and
[5] outside the hearing of the jury in
[6] Commonwealth v. John In. My crier, Mr.
[7] McNeill, has advised the attorneys and
[8] he's advising me of an issue he's now
[9] going to make of record.
[10] **THE CRIER:** Juror number 8 made
[11] contact with me and asked a question how
[12] would she be able to get down here because
[13] she was having financial problems for her
[14] car fare and her lunch. I spoke with her.
[15] I told her I would come and talk to you
[16] about it.
[17] **THE COURT:** Just so that we complete
[18] the record. We told this woman and all
[19] the other jurors when I addressed the
[20] group as a whole this case would go at
[21] least to Monday, agreed?
[22] **MR. GIULIANI:** Yes.
[23] **MS. BARALDI:** Yes.
[24] **THE COURT:** If she had a hardship she
[25] should have raised her hand. She did not

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[1] Commonwealth v. John In
[2] guy point a gun at you, says what he says. When
[3] that happened, you turn right around right back to
[4] your bedroom and call upstairs?
[5] **A.** Yeah, sure.
[6] **MR. GIULIANI:** Thank you, Miss Khem.
[7] **THE COURT:** Any re-redirect?
[8] **MS. BARALDI:** No.
[9] **THE COURT:** You may step down.
[10] - - -
[11] (witness steps down).
[12] - - -
[13] **THE COURT:** You may call your next
[14] witness.
[15] **MS. BARALDI:** If I may, my detective
[16] is testifying in 1108. May we take a
[17] short recess?
[18] **THE COURT:** Of course.
[19] - - -
[20] (jury leaves the box at approximately 3:05
[21] PM.)
[22] - - -
[23] (later...)
[24] - - -
[25] (The following proceedings were held

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[2] raise her hand. Counsel, do you want to
[3] take this up now or wait until tomorrow by
[4] moving 13 into 8 or you want to colloquy
[5] with her at this time? It's up to you.
[6] **MR. GIULIANI:** Be delayed until
[7] tomorrow.
[8] **MS. BARALDI:** I'm comfortable with
[9] that.
[10] **THE COURT:** Let's go out there.
[11] - - -
[12] (Whereupon, the following proceedings were
[13] held in open court outside the presence of
[14] the jury)
[15] - - -
[16]
[17] **THE COURT:** We're on the record
[18] outside the hearing of the jury again.
[19] Miss Baraldi, I'm mindful of the fact that
[20] there is some difficulty in this case
[21] because we have the unfortunate occurrence
[22] of a police officer losing her life in the
[23] line of duty. I understand the funeral
[24] will be on Friday.
[25] **MS. BARALDI:** Yes, your Honor.

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[1] Commonwealth v. John In
[2] **THE COURT:** What I would like to do is
[3] complete testimony on Thursday so we can
[4] go to the jury on Friday. Is that
[5] something we can do?
[6] **MS. BARALDI:** Yes. Do my best.
[7] **THE COURT:** You need to get back to
[8] the office to make that happen.
[9] **MS. BARALDI:** Yes, sir.
[10] **THE COURT:** What are you requesting?
[11] **MS. BARALDI:** I'm requesting that we
[12] break for the day.
[13] **THE COURT:** All right. Any objection?
[14] **MR. GIULIANI:** None, your Honor.
[15] **THE COURT:** You can bring the jury
[16] out.
[17] - - -
[18] (jury in the box at approximately 4 pm)
[19] - - -
[20] **THE COURT:** Thank you, ladies and
[21] gentlemen. You may be seated. First of
[22] all, thank you for your patience. As you,
[23] ladies and gentlemen, can see, it's now 4
[24] o'clock and for reasons outside the
[25] control of all of us, we're likely to take

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[1]
[2] I hereby certify that the proceedings and evidence
are contained fully and accurately in the notes
[3] taken by me on the trial of the above cause, and
that this copy is a correct transcript of the same.
[4]
[5] _____
[6] Linda Procopio
[7] Certified Court Reporter
[8] _____ 2007
[9] Date
[10]
[11] The foregoing record of the proceedings upon the
trial of the above cause is hereby approved and
[12] directed to be filed.
[13]
[14] _____
[15] Judge
[16]
[17]
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[22]
[23]
[24]
[25]

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[1] Commonwealth v. John In
[2] our recess today to adjourn for today at
[3] this time. Unfortunately that means that
[4] we have to make up this time tomorrow. So
[5] we will start at 9 o'clock, go to 5
[6] tomorrow. If you will be here a bit early
[7] to have you in the box at 9, I would be
[8] most appreciative. I remind you to keep
[9] an open mind. Don't discuss the case with
[10] anyone. Your can't discuss it among
[11] yourselves. Have a good evening. See
[12] you back here.
[13] - - -
[14] (jury leaves the room at approximately
[15] 4:03)
[16] - - -
[17]
[18] **THE COURT:** See you back here tomorrow
[19] morning
[20] - - -
[21] proceedings adjourned
[22]
[23]
[24]
[25]

